



Appeal Decisions

Site visit made on 19 May 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal A Ref: APP/F0114/C/19/3264913

Appeal B Ref: APP/F0114/C/19/3264914

Rosebank House, 112 Weston Lane, Lower Weston, Bath, Bath and North East Somerset, BA1 4AA

- Appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr John Heaney against an enforcement notice issued by Bath & North East Somerset Council ('the Notice').
 - Appeal B is made by Mrs Diane Heaney against an enforcement notice issued by Bath & North East Somerset Council ('the Notice').
 - The enforcement notice, numbered 20/00200/UNDEV, was issued on 12 November 2020 ('the Notice').
 - The breach of planning control as alleged in the notice is without planning permission, the vertical extension to a detached outbuilding. The building, the subject of this notice is located in the approximate position edged red on the attached plan and is shown in attached images 1 and 2.
 - The requirements of the notice is (a) Remove the unauthorised timber clad vertical extension to the outbuilding as shown outlined in red on Image 1 attached to this notice and reinstate a tiled dual pitched roof with an apex no higher than 3 metres, measured from the ground level on the south elevation and a roof pitch no more than 37 degrees, similar to the appearance of the original structure, outlined in blue in Image 2 attached to this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of the number "3" between "...no higher than" and "metres..." in section 5 'What you are required to do' of the Notice and the substitution of the number "3.25". Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Reasons

2. Rosebank House is a detached two-storey dwelling that is set in a generous plot. The house is set back from the road, behind a wall and gates. The detached outbuilding that is the subject of the Notice lies in front of the dwelling and is set into the slope of the land. It is rectangular in plan form, with accommodation over two levels. That at the lower level has an up-and-over garage door and appeared to be used for storage when I visited. A door at the higher level provides access to an area with relatively limited head height,

set partially within the roof space. When I visited, this was in use for recreational purposes associated with the use of the dwellinghouse.

3. The walls of the building at its lower level appeared to be constructed of cut stone blocks, whilst those at its upper level were finished in horizontal timber boarding. The outbuilding has a pitched roof clad in tiles to match those on the main roof of the dwellinghouse.

Ground (e)

4. An appeal under ground (e) is that copies of the Notice were not served as required by s172. This is a legal ground of appeal, and it is for the Appellants to prove their case on the balance of probability. The methodology for the service of Notices is set out in s329 of the Act.
5. In their statement of case, the appellants state that the Council should have served the Notice within 28 days of the date of its issue. This requirement is set out in s172(3) of the Act. Given that the date of issue was 12 November 2020, service was required by no later than 10 December 2020. The Appellants state that the Council failed in this regard.
6. The Appellants agree that the Council served a request for information under s16 of the Local Government (Miscellaneous Provisions) Act 1976 in the correct manner. This was returned by letter dated 16 May 2020, signed by John Heaney, stating that he and Diane Heaney were the Freeholders of the appeal site. Following its receipt, the Council says that it served copies of the Notice, using the recorded delivery process, on those persons named in the response to the s16 request on the 12 November 2020.
7. The Appellants claim that it was "clear from the copy receipt forms that these items were not actually delivered by the Royal Mail. The 'signatures' shown are false". I do not see how the Council could have found either assertion to be the case, nor do I have good reason to find that they should have carried out further checks. S329 sets out, amongst other things, that a Notice might be served "*by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that [the relevant] person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address*". The Council followed this statutory approach.
8. An email was sent to the Appellants, informing them of the service of the Notice, and they state that it was "fortunate" that this was the case. I have not been told if a copy of the Notice was attached to the email in the manner set out in s329(1)(cc), but the result was that the Appellants were certainly aware of the service of the Notice. The Council's actions clearly allowed the Appellants to lodge their appeals in a timely manner and, in this respect, they have not been prejudiced.
9. On the basis of the submissions, I find that the Council served copies of the Notice on those with an interest in the land, in accordance with s172 of the Act. Therefore, for the above reasoning, the ground (e) appeal fails.

Grounds (b) and (c)

10. An appeal under ground (b) is made on the basis that those matters stated in the Notice have not occurred. An appeal under ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. These are

both legal grounds of appeal where, again, it is for the Appellants to prove their case on the balance of probability.

11. In the section of their Statement entitled 'S174(2)(b)' the Appellants say that "The works carried out on the garage were necessitated by urgent maintenance required when roof sagging was noticed". They claim that the terms of s55 of the Act refer to "real development and not basic maintenance" and that this does not amount to development where they affect only the interior of the building or do not materially affect the external appearance of the building. They state that the section "clouds the issue" by making reference to "other operations normally undertaken by a person carrying on business as a builder".
12. This does not so much cloud things as provide a degree of clarity. The work that has been undertaken is, according to the Appellants, accurately illustrated in the photographs submitted by the Council. These show that what has occurred is operational development, which would normally be undertaken by a builder and affects the external appearance of the outbuilding. It is, therefore, development as defined in s55.
13. It is clear from the evidence that the development alleged in the Notice has occurred. As such, the appeal made under Ground (b) is dismissed.
14. I am told that the outbuilding was given planning permission in the 1980s and that the permission allowed for a building forward of the dwellinghouse, in excess of 2.5m high within 2 m of the boundary. The Appellant states that the outbuilding cannot therefore be constrained as it would be if it were a new building. It must, therefore, benefit from permitted development (PD) rights.
15. PD rights for outbuildings used for purposes incidental to the use of dwellinghouses, and within their curtilage, is set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Amongst its terms it states that where a building is within 2m of the boundary, with a height in excess of 2.5m, planning permission is required. I have not been provided with evidence of what the PD regime was at the time of the '1980s' permission, nor was I provided with a copy of the planning permission or the approved scheme. However, it seems safe to assume that planning permission was required and the development was not PD. There is no logic in the assertion that where a building has been granted permission at a certain height, as was the case in the 1980s permission, its subsequent vertical extension in a manner that would not be permitted development in a new build would not be constrained. Furthermore, no evidence of what PD or other rights might allow for this has been provided.
16. That there was nothing on the Council's website to indicate that planning permission would be required, cannot outweigh the statutory requirements of the Act and the GPDO. Reference has been made to PD rights relating to side extensions to dwellinghouses and moves by Government to allow property owners to undertake relatively minor works without permission. However, this is not a side extension and, for the reasons given above, the development that has been undertaken requires planning permission.
17. I cannot find any reference to the "introduction of a building" in the Council's Reasons for Issuing the Notice, so can make no comment on the point made in this regard.

18. For the above reasons, the Appellants have failed to prove on the balance of probability that the development that is the subject of the Notice does not represent a breach of planning control. As such, the appeal under ground (c) fails.

Ground (d)

19. An appeal under ground (d) is that at the date the EN was issued, no enforcement action could be taken in respect of the breach of planning control alleged in the Notice. This is a legal ground of appeal, and it is for the Appellants to prove their case on the balance of probability.
20. The Appellants' case is that there is a requirement for the Council to take action within 6 months of the date that the matter came to its attention. Other than referring to the "T&CPAct 1990" they do not specify the statutory basis for this requirement.
21. Time limits for taking enforcement action are set out in S171(B)(3) of the Act. With respect to operational development this is 4 years from the date on which the operations were substantially completed. Therefore, it is for the Appellants to show, on the balance of probability, that the works were substantially completed by 12 November 2016. They have provided no information in this regard.
22. The Courts¹ have held that a person undertaking development that requires planning permission and deliberately conceals the work should not benefit from this. It was stated there, however, that such cases would be rare. Here, the works were visible from the public realm and, notwithstanding that the Appellants did not seek an official view from the Council, there was no concealment.
23. In the light of the above, I find that the Council took enforcement action within the statutory time limit. For this reason, the appeal on ground (d) fails.

Ground (f)

24. An appeal under this ground is that 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.
25. The Appellants state that the previous ridge height for the building, when measured at its southern end was 3.25m. Thus, the requirement by the Council that the building should be reduced to 3m is excessive.
26. On this point, the Council states that its figure was an estimate, and it has no evidence to refute what has been claimed. In the circumstances, I accept that the ridge height of the building at its southern end was 3.25m prior to being vertically extended. Powers in s176 of the Act allow me to vary the terms of the Notice, as long as this would not cause injustice to any party. I find that the variation of the requirement of the Notice to read '3.25m, rather than '3m' is required and would not cause injustice to any party.

¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

27. The purpose of the Notice is to remedy the breach of planning control. Established case law sets out that where, as here, appellants choose not to pursue an appeal under Ground (a), they cannot introduce general planning considerations or arguments about amenity under Ground (f). The Appellants felt that a Ground (a) appeal would have been at odds with their belief that a planning application was inappropriate for the works undertaken. However, without an appeal under Ground (a) I am unable to take into account the arguments put forward by the Appellants in respect of matters such as: whether the development is appropriate to the locality, which is within a conservation area; the views of neighbours; and the benefits of the additional space that has been created cannot be taken into account.
28. To the extent that I vary the wording of the requirements in section 5(a) of the Notice, the appeal under Ground (f) succeeds.

Other Matters

29. As an appeal under Ground (a) has not been made, there is no need for the Council to put any arguments forward in support of its Reasons for Issuing the Notice, set in section 4 of the Notice.
30. No evidence has been given in support of the Appellants' assertion that the Council has dismissed considerations of their Human Rights. In any event, such considerations do not arise in the legal grounds where the questions are matters of fact and law. Furthermore, these considerations do not arise in Ground (f), where the issue is strictly one of whether or not the requirements of the Notice are excessive. On the latter, despite partially finding that the Appellants' case was partially successful, from the evidence before me I do not find that the Council has acted in a draconian fashion.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variation.

Roy Curnow

Inspector