



Appeal Decision

Site visit made on 25 May 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2021

Appeal Ref: APP/B9506/C/20/3262214

Land at 5 Pilley Hill, Pilley, Lymington SO41 5QF

- 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 Mrs D Devi against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 11 September 2020.
- The breach of planning control as alleged in the notice is without planning permission, erection of a conservatory in the approximate position shown shaded in blue on the plan attached to the notice.
- The requirements of the notice are: 1. Demolish/dismantle to ground level and permanently remove the conservatory. 2. Make good the remaining house structure with matching doors, windows and materials to that of the main house. 3. Make good the land around the site and permanently remove all debris resulting from compliance with this notice from the site.
- The period for compliance with the requirements is nine 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Background

1. The appeal site contains a semi-detached house. The house has previously been enlarged at the rear by a single storey flat roof extension and at the side by a two storey extension, the latter having been granted planning permission in 2002.
2. The enforcement notice attacks a conservatory running from the single storey rear extension across the remainder of the rear elevation of the enlarged house. An appeal following the refusal of planning permission for the conservatory was dismissed in September 2020¹.

Ground (f) appeal

3. The ground of appeal is that the requirements of the notice are excessive, having regard to its purpose.
4. At s173(4), the Act provides that an enforcement notice can achieve two purposes. Firstly, the notice can remedy the breach of planning control that

¹ Appeal Ref: APP/B9506/D/20/3253617.

has occurred. This includes by restoring the land to its condition before the breach took place. Secondly, the notice can remedy any injury to amenity caused by the breach. The National Park Authority (NPA) did not specify which of those purposes it sought to achieve in the notice. However, total demolition of the conservatory is required as opposed to lesser steps, such as a reduction in its size. Therefore, the purpose of the notice must be to remedy the breach.

5. The conservatory does not benefit from the planning permission granted for enlarging a house by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class A. As part of the conservatory extends beyond the wall forming the side elevation of the original house and having regard to the location of the site within the New Forest National Park (NP), the limitation in Class A at paragraph A.2 (b) is exceeded. The Courts have made it clear that in such instances the whole development is unauthorised, not just the part exceeding the GPDO limits². As a result, reducing the size of the conservatory to bring it within the limits of Class A would not restore the site to its condition before the breach took place; part of the conservatory comprised in the breach would remain in situ. It follows that requiring total removal of the conservatory is reasonable for the purpose of remedying the breach.
6. Be that as it may, it is clear that in the event the conservatory is totally demolished, a smaller conservatory could be erected at the rear of the house with the benefit of the planning permission granted by Class A. By recently issuing a Lawful Development Certificate (LDC) under s192 of the Act³, the NPA certified that a proposed smaller replacement conservatory would meet the relevant limitations and conditions in Class A. The replacement structure could be erected more or less immediately following demolition of the conservatory. It is not unreasonable to anticipate that the appellant would build in accordance with the LDC, to replace some of the living space lost by demolition of the conservatory. To not extend beyond the side elevation of the original house, the replacement would be slightly over half the size of the conservatory. However, having regard to the drawings accompanying the LDC application it is likely that the replacement would occupy a considerable part of the same footprint, it would have a similar lean-to form and would be of a similar appearance to the conservatory. As a result, erecting a similar, albeit significantly smaller replacement structure under Class A following demolition of the conservatory represents a realistic fallback position.
7. At s173(4), the Act also provides for remedying the breach by making the development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where planning permission is granted by the GPDO. By reducing the conservatory in size so that it did not extend beyond the side elevation of the original house, the limitation in Class A at paragraph A.2 (b) would no longer be exceeded. As no other limitations or conditions in Class A are exceeded, such a reduction in size would bring the conservatory within what would otherwise have been permitted by Class A. The wall forming the side elevation of the original house can be clearly identified in the built fabric. Also, the drawings accompanying the LDC application show the extent to which the conservatory would have to be reduced in size. I am given to understand that there is no practical

² *Garland v MHLG* [1968] 20 P&CR 93.

³ NPA Ref: 20/00900 dated 1 February 2021.

- impediment to reducing the size of the conservatory. As a result, a requirement to reduce the size of the conservatory as set out above would be sufficiently precise. Requiring the reduction in size as an alternative remedy would be sufficiently clear for there to be no uncertainty as to what must be done to comply with the notice.
8. Therefore, having regard to the fallback position of what could otherwise be achieved under Class A, reducing the size of the conservatory so that it complies with the planning permission granted by the GPDO represents an obvious alternative which would overcome the planning difficulties at less cost and disruption than total demolition. This reflects the remedial intentions of the enforcement procedure, as endorsed by the Courts⁴. Specifying this as an alternative is not the same as under-enforcement, as the breach would still be remedied. Consequently, the alternative remedy does not attack the substance of the notice and does not offend the approach set out by the Courts in circumstances where there is a ground (f) appeal only⁵.
 9. I have no doubt that depending on the circumstances, the NPA might not have sought full compliance with the notice, including the requirement for total demolition of the conservatory. However, this is not reflected in the notice requirements as issued. As a result, in practice the appellant has very little by way of reassurance in the above respect. For reasons of certainty and also having regard to the potential penalties for failing to comply, the appellant is entitled to be able to ascertain exactly what they are required to do from the enforcement notice and not have to rely on pragmatism or goodwill on the part of the NPA. Consequently, this matter does not represent a sound argument against varying the notice along the lines set out above.
 10. I understand that the NP is subject to intense development pressure and appreciate the NPA's concerns regarding a proliferation of unauthorised development. However, ground (f) offers limited scope to vary the notice in the absence of an accompanying ground (a) appeal. Accordingly, there are unlikely to be a great number of instances where a requirement that stops short of total removal of the unauthorised development would be an acceptable alternative remedy to the breach and probably fewer still where this could be specified with sufficient clarity. Moreover, as reducing the size of the conservatory is probably a more complex operation compared to total demolition, the appellant is likely to incur extra costs. Therefore, I see no good reason why varying the notice to include the alternative remedy would provide any greater encouragement for undertaking development without planning permission.
 11. For the above reasons, whilst I find that the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that extent.

Formal Decision

12. It is directed that the enforcement notice be varied by inserting the following requirements after step 3 in paragraph 5:

"OR:

⁴ *Tapecrown Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744.

⁵ *Wyatt Brothers (Oxford) Ltd v SSETR* [2001] PLCR 161; *Mata V SSCLG* [2012] EWHC 3473 (Admin).

- 4) *Partially demolish and alter the conservatory in the approximate position shown in blue on the plan attached to the enforcement notice, to reduce its size so that it does not extend beyond the wall forming the side elevation of the original house, to make the development comply with the terms (including conditions and limitations) of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A.*
- 5) *Make good the remaining house structure where the part of the conservatory has been demolished using external materials to match those of the main house.*
- 6) *Make good the land following the partial demolition and alterations and remove all debris resulting from compliance with the notice from the land."*

Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR