



Appeal Decisions

Site visit made on 17 November 2021

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2021

Appeal Ref: APP/P4415/C/21/3280044 and 3280045

1 Brookfield Mews, South Anston, Rotherham

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Daniel Riley and Amy Riley against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice was issued on 2 July 2021.
 - The breach of planning control as alleged in the notice is 'The dwelling has been built without the chimney and the canopy to the front door, and the header and cill features as shown on approved plan RB2015/1383 Amended elevation drawing 09 rev A. The dwelling is now occupied'.
 - The requirement of the notice is 'Install the chimney and canopy along with the header and cill features as detailed on the approved plan RB2015/1383, drawing 09 rev A'.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. The prescribed fee was not been paid within the specified period so an appeal on ground (a) cannot be considered.
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Decision

1. The enforcement notice is corrected by the deletion of ', and the header and cill features' in section 3 and 'along with the headers and cill features' in section 5.
2. The appeals are dismissed and the enforcement notice is upheld as corrected.

Correction to the enforcement notice

3. The Council has accepted that "...the property does feature brick detailing around each of the windows". This brick detailing accords with the features shown on the approved drawing and the enforcement notice has thus been corrected by the deletion of references to 'cills and headers' in the alleged breach of planning control and in the requirement of the notice.

Reasons

4. A canopy has been built over the front door of the property in accordance with the approved drawing referred to in the notice. There is nothing to indicate that the canopy was in place on the date of issue of the enforcement notice so, with regard to the canopy, the notice must remain as it is. The ground (c) appeals thus only relate to the chimney shown on the approved drawing.
5. A ground (c) appeal is made when it is claimed that the breach of planning control alleged in the enforcement notice either has planning permission or is

permitted development. Construction of the dwelling in accordance with approved drawings is the requirement of a condition of planning permission RB2015/1383. Construction of the dwelling not in accordance with an approved drawing is in breach of the condition and omission of the chimney as shown on the approved drawing cannot therefore benefit from planning permission, and is not permitted development. The ground (c) appeals thus fail.

Other matters

6. The issue of National House Building Council warranties and certificates and the issue of completion certificates under Building Control legislation do not indicate that a building is lawful under planning legislation. Other matters mentioned by the Appellants, such as the need for the chimney and the bankruptcy of the builder, are only relevant in a ground (a) appeal which would have, if it had been made, considered the merits of retention of the dwelling without a chimney.

Conclusion

7. The omission of the chimney as shown on the approved drawing does not have planning permission and is not permitted development. The ground (c) appeals have thus failed.

John Braithwaite

Inspector