



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 29th December 2021

Appeal A Ref: APP/V4250/C/21/3282305

Appeal B Ref: APP/V4250/C/21/3282306

138 Orrell Road, Orrell, Wigan WN5 8HJ

- The 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 Michael Nanyin and Appeal B is made by Susan Nanyin against an enforcement notice issued by Wigan Metropolitan Borough Council.
 - The enforcement notice was issued on 4 August 2021.
 - The breach of planning control as alleged in the notice is: Without the benefit of the necessary retrospective planning approval, the erection of an unauthorised timber elevated platform to the rear of the existing dwelling.
 - The requirement of the notice is
Remove the elevated timber platform from the rear of the dwelling.
 - The period for compliance with the requirements is 28 days.
 - The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act)
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Decision

1. It is directed that the enforcement notice be varied by the deletion of "28 days" and the substitution of "4 months" as the period for compliance. Subject to this variation, Appeals A and B are dismissed and the enforcement notice is upheld.

The appeal under ground (f)

2. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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. It is therefore necessary to establish whether the purpose of the notice is to remedy the breach of planning control or remedy any injury to amenity. As the requirement is to remove the development, the purpose of the notice is to remedy the breach.
3. The appellants wish to modify or reduce the existing development and therefore consider that requiring the removal of the whole development is excessive. Recent discussions have taken place about a modified scheme with the Council although a planning application had not been submitted.
4. However, the planning merits of any alternative scheme are a matter for the Council after appropriate third party consultation and fall outside the remit of this appeal which is proceeding on the limited grounds (f) and (g) only. The appellants consider that removal of the development would leave them without

external access to the rear as patio doors replaced a window. However, it is not clear why the appellants could not rely upon the access arrangements that existed before the development took place. Nevertheless, as the purpose of the notice is to remedy the beach, a requirement to remove the development is not excessive. The appeal under ground (f) fails.

The appeal under ground (g)

5. An appeal under ground (g) is that the time allowed for compliance with the requirement of the notice is too short. The period for compliance with the notice is 28 days and the appellants indicate that 28 days is not long enough to find a team to remove the development. 28 days would also now include part of the holiday period which may affect availability of workmen to undertake the removal.
6. In addition, there are ongoing discussions with the Council about a modified scheme. On balance, a compliance period of 4 months would allow the appellants to submit a planning application for a modified scheme, should they wish to do so. At the same time, they can obtain quotes and arrange for removal of the development, in the event of a modified scheme either not being submitted or not being approved. The ground (g) appeal therefore succeeds to that extent. I will vary the notice accordingly.

Conclusion

7. For the reasons given above, I conclude that a reasonable period for compliance would be 4 months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

E. Griffin

INSPECTOR