



Appeal Decision

Site visit made on 5 January 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/V4250/C/21/3283506

20 Wolmer Street, Ashton-In-Makerfield WN4 9TT

- 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 P Eatock against an enforcement notice issued by Wigan Metropolitan Borough Council.
- The enforcement notice was issued on 23 August 2021.
- The breach of planning control as alleged in the notice is the erection of a two storey bay window extension on the front elevation of the dwelling.
- The requirements of the notice are to remove the two storey bay window extension on the front elevation of the dwelling located on the Land and reinstate the front elevation so that it is similar in appearance and design to the original two storey bay window (the curve features and projection should be no greater than the original).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The Enforcement Notice

1. The appellant contends that there is a lack of clarity with respect to the requirement to reinstate the front elevation and, specifically, who would determine whether the reinstated bay is similar in appearance to the original two storey bay window. I am satisfied that the requirements of the notice are sufficiently clear and no alterations are required.

The appeal on ground (f)

2. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of the two storey bay window extension on the front elevation of the dwelling and reinstatement of the front elevation so that it is similar in design and appearance to the original bay window, the purpose is clearly to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In this respect, the appeal on ground (f) fails.
3. Since there is no appeal on ground (a), and the purpose is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The appellant has stated that the requirement to remove the development is not unreasonable but contends that

the removal of the original bay would, in itself, constitute permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. However, permitted development rights cannot be exercised retrospectively and varying an enforcement notice so that a reduced scheme can be carried out would not serve to remedy the breach. Consequently, the proposal put forward by the appellant is not a realistic fallback position and does not attract weight in the determination of the appeal on ground (f).

The appeal on ground (g)

4. The ground of appeal is that the time given to comply with the requirements is too short. The 6 months given would be sufficient to remove the two storey bay window and reinstate the front elevation. It would also avoid the need for work to be carried out during winter months. The 12 month compliance period suggested by the appellant would be excessive having regard to the continuing harm caused by the development. Therefore, the appeal on ground (g) does not succeed.

Formal Decision

5. The appeal is dismissed and the enforcement notice upheld.

A A Phillips

INSPECTOR