
Appeal Decision

Site visit made on 27 January 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/Z2260/C/21/3269981

1 St James Terrace, Birchington, Kent CT7 9BE

- 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 Stuart Carter against an enforcement notice issued by Thanet District Council.
- The enforcement notice was issued on 27 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised single storey pitched roof porch to the front elevation.
- The requirements of the notice are:
 - A) Remove the unauthorised porch from the front of the property.
 - B) Make good all areas of the front wall affected by its removal, including repairing patching, painting or plastering where necessary.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. An enforcement notice must enable every person who receives a copy to know what constitutes the breach of planning control, the reasons for issuing it and what they must do to put it right. With reference to case law (*Miller-Mead v Minister of Housing and Local Government* [1963] QB 196), the appellant questions the validity of the enforcement notice because he considers the first requirement of the notice is not sufficiently clear and precise.
2. In the notice, the first requirement states "remove the unauthorised porch from the front of the property." The appellant questions the use of the word 'remove' and contends that a porch cannot be removed from the front of the building without carrying out other steps to be able to remove it.
3. S173(5)(a) of the 1990 Act states that "An enforcement notice may, for example, require – (a) the alteration or removal of any buildings or works." I accept that the notice does not require the resultant materials to be removed from the site following the removal of the porch from the front of the property. Nevertheless, the notice is sufficiently clear and precise, and the recipients of the notice appear to have understood what they have done wrong and what they must do to remedy it. Thus, I do not accept, as claimed by the appellant,

that the ordinary man in the street would not understand what the notice is aiming to achieve.

4. In the notice the Council clearly sets out the matters which constitute the breach of planning control, reasons for issuing the notice and the steps required to comply with them. Thus, I do not consider that the notice is a nullity or invalid.
5. A revised National Planning Policy Framework (the Framework) came into force in July 2021, after the appeal had been submitted. Other than a change to the relevant paragraph numbers, the revised Framework does not materially alter the national policy approach in respect of the main issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.

Application for costs

6. An application for costs was made by Mr Stuart Carter against Thanet District Council. This application is the subject of a separate Decision.

Appeal on ground (a)

The appeal development and the fallback position

7. An appeal on ground (a) is that planning permission ought to be granted in respect of the matters stated in the notice. As set out above, the notice only alleges that there has been an erection of an unauthorised single storey pitched roof porch to the front elevation. The Council are aware that there is a roof canopy over the front bay window and in its submissions acknowledge that the roof canopy is not included in the notice. Thus, the ground (a) appeal and deemed planning application is strictly concerned with the merits of the porch only.
8. In relation to the porch, Class D of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the erection or construction of a porch outside any external door of a dwellinghouse. Paragraph D.1 states that development is not permitted by Class D if –
 - (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of the Schedule (change of use).
 - (b) the ground area (measured externally) of the structure would exceed 3 square metres;
 - (c) any part of the structure would be more than 3 metres above ground level; or
 - (d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.
9. I am informed that the ground area of the porch is approximately 3.59m², it is 3.1m in height and is approximately 1.25m from the front garden boundary.
10. Both parties in their submissions refer to the fallback position of modifying the dimensions of the porch so that it falls within the limitations of Class D of the GPDO.

11. If this appeal is dismissed, it seems likely that the appellant would modify the porch in line with Class D of the GPDO. The fallback position is a realistic prospect.

Main Issue

12. The main issue is the effect of the development on the character and appearance of the appeal property and the surrounding area.

Reasons

13. The appeal site is located in a residential area with a mixture of dwelling types. St James Terrace is characterised by a row of two-storey terrace dwellings to the west and larger detached and semi-detached single storey dwellings to the east. The appeal site comprises a two-storey end of terrace property which has previously been extended to the rear. Due to its end of terrace location, views of the front and side of the appeal property are readily available from the approach into the street off Canterbury Road.
14. The properties within the terrace row have all been built with similar designs and materials along a relatively uniform building line. Also, the dwellings have paired and mirrored front entrance door locations and bay windows which contribute to the uniformity of this part of St James Terrace.
15. The porch to the front of the property reduces the spacing between the porch and the bay window which disrupts the uniform character and appearance of this part of St James Terrace. In that the porch fails to respect or enhance the character of the surrounding area there is conflict with the aims of Policy QD02 of the Thanet District Council Local Plan (2020) and the Framework which state that development must be well designed, respect and enhance the character of the area paying particular attention to context and identity of its location, scale, massing, rhythm, density, layout and use of materials appropriate to the locality.
16. I am required to determine ground (a) in accordance with the provisions of the development plan unless material considerations indicate otherwise, I am mindful of the realistic fallback position. In this case, regarding the porch, all that could be required is a small reduction in its height, ground area, and depth. In my view that would make no material difference to the impact of the porch on this row of properties.
17. On the main issue I conclude that the effect of the porch as built on the character and appearance of the appeal property and the surrounding area when compared with the fallback does not result in any additional material harm such that it warrants dismissal of the appeal. In this particular case the material consideration of the fallback outweighs conflict with local policies and indicates that the appeal should be determined otherwise than in accordance with the development plan.
18. The Council considers that because the development is already in situ no conditions are necessary. The porch, with its slate tile pitched roof with black painted barge boards has been designed to be in keeping with the host property in terms of materials which match the existing building. Thus, I consider that no further conditions are necessary.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission should be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

20. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a porch at 1 St James Terrace, Birchington, Kent CT7 9BE referred to in the notice.

Elizabeth Jones

INSPECTOR