



Appeal Decision

Site visit made on 1 February 2022

by D Moore BSc (Hons), MCD, PGDip, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/W4705/C/21/3280312

1356 Leeds Road, Bradford BD3 8ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Ashiq Elahi against an enforcement notice issued by the City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 24 June 2021.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a two-storey front extension and access ramp.
- The requirements of the notice are to:
 - i Demolish the unauthorised two-storey front extension and access ramp.
 - ii Remove the arising materials from the land.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (e) and (f) of the 1990 Act as amended.

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.

Preliminary Matters

1. Planning permission was granted for a two-storey front extension, Ref 17/01495/FUL dated 10 May 2017. The Council says that the development, as built, differs from the approved plans because external shutters have been installed over the ground floor windows; the development extends beyond the original eaves height; the fenestration is different and the access ramp is of a different length. It has consequently issued an enforcement notice requiring the demolition of the extension and the access ramp.
2. The appellant has not made a ground (f) appeal explicitly, through ticking the appropriate box on the appeal form. However, the arguments advanced under ground (c) explain that the approved scheme was acceptable to the Council and the differences between the planning permission and the development as built are minor. The inference is that there is a lesser step short of demolition. This would be to alter the development so that it complies with the terms and conditions of the planning permission, which the Council has acknowledged. I have considered this matter under ground (f) below.

The ground (e) appeal

3. The main issue is whether the appellant has shown, on the balance of probability, that the notice was not served as required by section 172 of the 1990 Act and, as a result, there has been substantial prejudice.

4. The appellant accepts that the notice was served by the Council, as required, but it was only through luck that he saw the letter, since there is no letterbox at the property.
5. Section 172(2) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land. Although the appellant was not aware of the notice immediately, it was received and enabled the submission of an appeal within the relevant timescale. Consequently, I conclude on the balance of probability that the notice was served as required and the appeal on ground (e) must fail.

The ground (c) appeal

6. In order to succeed on an appeal on ground (c), the appellant must show on the balance of probability that the matters alleged in the enforcement notice do not constitute a breach of planning control.
7. The appellant acknowledges that he made some minor adjustments to the scheme. Those changes represent departures from the approved plans and, as such, the development constitutes a breach of planning control. The appeal on ground (c) fails, therefore.

The ground (f) appeal

8. Ground (f) is that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity caused by any such breach. The wording of Section 174(2)(f) links back to Section 173, which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly those purposes of (a) remedying the breach, or (b) remedying any injury to amenity. The enforcement notice specifies the development is detrimental to visual amenity, which is its purpose. Therefore, I must consider whether the steps required by the notice exceed what is necessary to remedy the injury to amenity.
9. The Council confirms¹ - *"Whilst the extension is to the front, hence quite prominent, it would not appear unduly strident or incongruous given setting of existing nearby front extensions. This was the view taken under previous extension approved under 17/01495/FUL. The retrospective extension as built diverts from the approved plans: with the change of ground floor shutters, height extending beyond the eaves, side fenestration and length of the ramp. There are no objections to the side fenestration and length of the ramp."* From this, I conclude that the objections relate to the height and the shutters.
10. It seems that the building previously had decorative eaves with stone brackets to the guttering, which has been lost as a result of the development. However, the approved plans show the two-storey extension extends up to, and beyond, the eaves. The decorative stone brackets were not shown on the plans but the loss was inevitable given the extent of the development approved. It is clear from the approved plans that there is no deviation in this respect, albeit may not have been what the Council expected.

¹ Planning Officer's Report Ref 21/03175/FUL Amendments to shop frontage as currently built (retrospective application).

11. The shutters are integral to the building. The housing is flush with the face of the walls and is relatively well concealed. Nonetheless, the Council maintains an objection due to the requirements of its supplementary planning document "A shopkeepers guide to securing their premises", that presumes against external shutters. The shutters were not included in the approved plans and they form part of the breach. There is no ground (a) appeal and so there is no mechanism for me to consider their planning merits. As such, I am confined to the matters that fall within the ground (f) appeal.
12. The enforcement notice requires the demolition of the structure, but since the only objections relate to its height and the shutters, demolition would be excessive to remedy the injury to amenity. If I were to vary the requirement to require the extension to be altered in accordance with the approved scheme, the height of the structure would not be change since this element is not a departure from the approved plans. Any such amendment would serve no useful purpose as it would also require alterations to the ramp and fenestration, which the Council accepts are not harmful. As explained above, only the shutters remain at issue. Their removal can be secured by an appropriately worded variation to the requirements. This would remedy the injury to amenity caused by the shutters and achieve the statutory purpose behind the notice.

Conclusion

13. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the injury to amenity. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent. When the requirements, as varied, have been complied with, planning permission shall be treated as being granted for the matters alleged, under Section 173(11) of the 1990 Act.

Formal Decision

14. It is directed that the enforcement notice is varied by the deletion of the requirements in paragraph 5 and their replacement with "remove the external shutters installed over the windows to the ground floor of the extension and make good the window openings".
15. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

D Moore

INSPECTOR