



Appeal Decisions

Site visit made on 24 November 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Appeal Refs: APP/P1560/C/20/3250984 & 3250985 209 London Road, Clacton-on-Sea CO15 4ED

- 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 by Lloyd Otte (3250984) & Chanelle Otte (3250985).
against an enforcement notice issued by Tendring District Council.
- The enforcement notice, ref. 19/00108/ENFENQ, was issued on 13 March 2020.
- The breach of planning control alleged in the notice is:
The carrying out of substantial building operations to rebuild and alter a former dwelling house at the property and not in accordance with the approved plans and drawings as to planning permissions 18/00820/FUL, 19/00147/FUL and 19/00964/FUL and in particular:
 1. The formation of new windows on the side elevation of The Property adjoining 203 London Road and with a new bathroom/WC window as shown edged red on Photo TDC 1 attached to the notice.
 2. The formation of a single-storey rear extension in the appropriate position shown edged blue on Plan 2 annexed hereto incorporating a raised platform/balcony on the rear elevation of the property as shown on Photo TDC 2 attached to the notice.
- The requirements of the notice are to:
 1. Install obscure glazing to at least Pilkington Glass Level 3 standard and thereafter permanently retain same to the downstairs window nearest to London Road on the side boundary with 203 London Road shown edged red on Photo TDC 1 attached to the notice.
 2. Install obscure glazing to at least Pilkington Glass Level 3 standard and thereafter permanently retain same to any other downstairs window on side elevation with 203 London Road if it also serves any bathroom or WC.
 3. Demolish and remove the unauthorised rear single-storey extension in the appropriate position shown edged blue on Plan 2 attached hereto together with the raised platform/balcony on the rear elevation of the property as shown edged red on photo TDC2 attached to the notice.
 4. Remove all debris resulting from the said demolition.
 5. Ensure the rear elevation second storey window shown edged green on Photo TDC 2 attached hereto remains permanently fixed and that it is not replaced by any opening door or window.
- The period for compliance with the requirements is 2 months for all steps required.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. The statutory fee for appeal ref. APP/P1560/C/20/3250985 has not been paid, therefore the deemed planning application for planning permission does not fall to be considered in that appeal.

Decision

1. The appeals are allowed and the enforcement notice is quashed.

Application for costs

2. Applications for costs has been made by the appellants against the Council. These applications are the subject of separate Decisions.

Procedural matters

3. On 13 March 2020 the Council issued another enforcement notice - against breach of conditions - on all three planning permissions quoted in the notice before me. No appeal was made against that other notice.

The appeals on ground (b)

4. This ground is that the matters enforced against have not occurred as a matter of fact. In a case such as this, raising one of the 'legal' grounds of appeal the burden of proof is on the appellant to show that this is the case on the balance of probabilities.
5. Furthermore, in cases of this type if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probability.
6. There have been three planning permissions granted for the property that are relevant to this case, all referred to in the allegation. They are for remarkably similar schemes entailing a substantial part single-storey and part 2-storey back extension, and raising the roof over the footprint of the entire original bungalow, including formation of gables where there were originally hipped ends. All schemes include three dormers to the front, and a dormer on the flank roof of the upper floor of the back extension. I note this latter dormer is not shown on the proposed back elevation in planning permission 19/00147/FUL, although shown on the plan.
7. The appellants argue that each of these are standalone permissions, any one of which could have been lawfully built. I concur with this view, since none of them are dependent on any others – such as might be the case if for instance permission ref. 19/00147/FUL were described as '*amendment to planning permission ref. 18/00820/FUL*'. This is not the case here. Each is a separate permission, subject to its own conditions.
8. The appellants also say that they have to all intents and purposes built the scheme approved by planning permission ref. 19/00964/FUL with some minor deviations. This permission was for:
'Proposed new raised roof including hipped gable ends, 3 no. pitched roof dormers, 2 no. side windows, a single-storey rear extension with 2 no. Velux rooflights, fixed rear window and 1 no. pitched roof dormer, and rebuild 3 no. walls (reinstating dwelling).'
The conditions on the permission are the standard time limit condition, a condition requiring the window serving the master bedroom on the western elevation to be fixed shut on installation and permanently retained in that form, and a condition requiring the development to be carried out in accordance with approved plan no. 01 revision J.
9. A significant difference between the scheme ref. 19/00964/FUL and the two others is that it does not include French doors with an external 'Juliet' balcony rail in the back elevation at first floor level of the extension. This window serves the new main bedroom of the altered building. Instead, the approved drawing shows a fixed full height window of approximately the same dimensions, with no external rail.

10. The minor deviations claimed by the appellants are that of the three ground floor windows in the southern flank wall, the bathroom window is 0.2 of a metre wider than shown on the approved scheme. The lounge window is 0.3 of a metre narrower, the frame 0.1 of a metre taller and the cill 0.1 of a metre higher. The kitchen/dining room window is 0.3 of a metre wider – although the elevation drawing shows this window to be 0.3 of a metre smaller than indicated on the floor plan, and the cill as 0.1 of a metre higher and the frame 0.1 of a metre taller.
11. Regarding the bathroom window, the approved scheme shows retention of the original top-hung window. I take this to be the reason the permission is for 2 no. side windows rather than 3. However, this window has been replaced with a new one. The appellants say this is 0.2 of a metre wider than the original, and 0.1 of a metre higher. This window matches the cill and head levels of the other windows on the elevation, and it can be seen from photographs that they are all in a somewhat higher position above ground level than shown on the approved plan no. 01 revision J.
12. The increase in height of the bathroom window does not increase its potential for overlooking as compared with the original window. Furthermore, the new window is obscure glazed in remarkably opaque glass, and there is a high boundary fence on the other side of the passageway that in any case largely prevents intervisibility. Although the original bathroom window may have been obscure glazed, there is no claim this was so, or any requirement in the planning permission that it – or any replacement – should remain so. As a matter of fact and degree I do not consider this change from the approved plan has any significant consequence in planning terms.
13. The flat-roofed single-storey back extension is shown on the approved plan as having a conventional fascia and gutter. However, it has been constructed as a parapet roof. It can readily be seen that the parapet is no more than a kerb raised above the level of the flat roof to a height sufficient to accommodate a concealed gutter – I estimate not significantly more than 150mm. The approved plan provides no height dimensions, and there is no condition requiring heights or levels to be submitted and approved. Furthermore, I could see no fixed points against which any proposed heights could be assessed. I consider that as a matter of fact and degree the enforcement notice erroneously describes the flat roof as a raised platform/balcony
14. As to potential use of the flat roof, the first floor bedroom window in this scheme is a fixed light providing no access to the roof – as shown on the approved plan. A fixed external rail has now been installed across this window. In my opinion there is no greater opportunity for overlooking adjacent properties, and probably rather less than for the other approved schemes with their French doors. In any case, there is a planning condition on this approval requiring the window to be fixed shut on installation and permanently retained in that form. If the appellants or their successors want to change this arrangement a further planning application would be needed.
15. I understand the single-storey back extension is about 0.2 of a metre deeper than dimensioned on the approved drawing. However, again I do not consider this has any significant planning consequences in terms of potential overlooking or harm to outlook for occupants of nearby dwellings. Furthermore the

boundary fence and hedging to no. 203 London Road largely prevent any overlooking.

16. The appeal site is adjacent to the Robin Hood public house, which is a Grade II listed building. However, the sites are well separated by the public house garden and screened by boundary treatments. I am satisfied – as are the Council – that the appeal development causes no significant harm to the setting of the listed building.
17. Overall, I consider the scheme has been constructed to all intents and purposes in accordance with the approved drawing no. 01 revision J, although with minor variations. As a matter of fact and degree these are not significant in planning terms. On the balance of probabilities therefore there has been no breach of planning control and the appeal on ground (b) succeeds.

Conclusions

18. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances I do not need to consider the appeals under the other grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Brown

INSPECTOR