
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: 21 February 2022

Appeal Ref: APP/Z2260/C/21/3280322

1 Harrow Dene, Broadstairs, Kent, CT10 2UY

- 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 Le Comte against an enforcement notice issued by Thanet District Council.
- The enforcement notice was issued on 1 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the installation of dormer windows to both side elevations to facilitate the loft conversion.
- The requirement of the notice is to remove the unauthorised alterations to the roof and reinstate the original roof design or alter the development in accordance with approved planning permission F/TH/19/0608.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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 dismissed and the enforcement notice upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant has made reference to the Council's scheme of delegation and suggests that the notice has been issued without the correct authority. Whilst I note the appellant's evidence in this regard, long established caselaw makes clear that these considerations are not within my jurisdiction which is confined to assessing the scope of the appeal under Section 174 of the Act. I do not have jurisdiction to deal with submissions as to whether the Council acted outside its powers in issuing the notice.
2. Having reviewed the submissions, I considered that an accompanied site visit was not needed and that only an access required site visit was necessary. No response was received to a request to the appellant for access onto the site for the visit on the date noted above. The appellant subsequently confirmed that he did not receive the email correspondence for an access required site visit. On visiting the site, I was satisfied that I was able to assess the development from the public domain and therefore carried out my site visit on an unaccompanied basis. As a matter of courtesy, after my visit, I notified the occupier of the appeal property that I had carried out an unaccompanied site visit. Having looked at the development and its surroundings from the public domain, I am satisfied that I have all the evidence to enable me to make a decision.

The Enforcement Notice

3. 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. The appellant questions the validity of the notice because he considers that the notice relates to the "installation of windows in the dormer extension and not to the dormer extension itself".
4. The planning history includes a grant of planning permission Ref FH/TH/19/0608 for the "installation of dormer windows to both side elevations to facilitate loft conversion" (hereafter the 2019 permission). Building works subsequently undertaken differ from the plans approved under this planning permission namely - the dormer window on each side elevation were larger.
5. A subsequent planning application ref FH/TH/20/1214 for "Retrospective application for the installation of dormer windows to both side elevations to facilitate loft conversion" was refused.
6. In the notice the Council clearly sets out the matter which constitutes the breach of planning control in the same terms as the previous planning applications. I am not aware that the appellant objected to the description of development in either of these planning applications. Thus, it is reasonable to assume he understood that 'dormer windows' included the whole development and not just the windows themselves. Thus, I do not consider that the notice needs to be corrected in this regard.

The ground (a) appeal and the deemed planning application

Main Issue

7. The main issue is the effect of the development on the character and appearance of the appeal property and street scene.

Reasons

8. The appeal concerns a detached bungalow situated in a residential area which comprises a mix of bungalows and two storey dwellings of varying styles.
9. Both parties have provided measurements regarding the size of the appeal development compared with the development approved by the 2019 permission. Whilst there is a dispute between the parties regarding the exact measurement of the increases, there is no dispute that the appeal development has been built larger than that approved by the 2019 permission.
10. I acknowledge that the Council has previously found the principle of installing dormer extensions, albeit smaller in size, on either side of the roof slope acceptable. However, due to its large size, whilst set down from the ridge, the appeal development appears as an incongruous addition to the existing roof form. Moreover, the dormers extend across almost the entire width of the property on either side and are significantly closer to the eaves and to the front and rear gables when compared to the 2019 permission. As a result of its scale and bulk, the appeal development has a dominating impact on the appeal property to a harmful degree.
11. In terms of the surrounding area, the appellant has referred to a number of other dormers. I looked at a number of these at my site visit and found that there are not directly comparable in size or context to the appeal development.

In any event, each case falls to be considered on its own merits and existing developments elsewhere do not justify the development at the appeal site. Whether or not the difference in the appeal development to that allowed by the 2019 permission would go unnoticed by the vast majority of people walking or driving past as argued by the appellant, the appeal development is a discordant element in the local area.

12. I conclude that the appeal development causes unacceptable harm to the character and appearance of the appeal property and the surrounding area. Thus, there is conflict with Policy QD02 of the Thanet District Council Local Plan, Policy BSP9 of the Broadstairs and St Peter's Neighbourhood Development Plan 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.

Other matters

13. I recognise that this appeal concerns the appellant's home and family and that compliance with the notice will have financial implications. Also, I accept that enforcement action is intended to be remedial and not punitive. However, I am mindful that the identified harm will be permanent and is not outweighed by the appellant's particular circumstances.
14. The appellant's comments regarding third party objections are not matters determinative to the appeal.
15. Whether or not certain parts of the appeal development could be considered as minor amendments and whether it was expedient to issue the notice is a matter for the Council and is not relevant to the s174 grounds of appeal.

Conclusion

16. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (g) appeal

17. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellant contends that a one-year compliance period is required.
18. Given the global pandemic, I accept that there may be a delay in obtaining materials and engaging contractors to carry out the work. Moreover, I acknowledge that being elderly the appellant would prefer the works to be carried out in the warmer summer months and compliance with the notice has financial implications for the appellant. However, given the identified harm, I consider that a compliance period of one year is unnecessarily long. Having regard to the submission from both parties I consider that a reasonable period for compliance of six months strikes the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant. If this reasonably proves not to be the case, the appellant can ask

the Council to extend the period specified in accordance with s173(9) in the notice using their powers under s173A(1) of the 1990 Act as amended.

19. Therefore, the appeal on ground (g) fails.

Formal Decision

20. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR