



Appeal Decision

Site visit made on 29 June 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/W2465/C/21/3285616

Land at 5-9 Portland Towers, Leicester LE2 2PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mrs Tilat Khan against an enforcement notice issued by Leicester City Council.
 - The notice was issued on 21 September 2021.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised construction of additional outbuilding at rear of the Property'.
 - The requirements of the notice are:
 - Demolish the new outbuilding located closest to the Property as shown in the photographs marked 'X'.
 - Remove all excess material from the site resulting from step 1 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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.
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Decision

1. It is directed that the enforcement notice is corrected by deleting 'Section 172(1)' from paragraph 1 and replacing it with 'section 171A(1)(a)'.
2. Subject to that change, 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.

Preliminary Matter

3. Paragraph 1 of the notice refers to a breach of planning control under section 172(1) of the Act. In fact, what constitutes a breach of planning control is set out at section 171A(1). The allegation here is carrying out development without the required planning permission, which falls within section 171A(1)(a), and that is what the notice should refer to. Reference to this section of the Act is not optional – section 173(1) says that an enforcement notice shall state –
 - (a) the matters which appear to the local planning authority to constitute the breach of planning control; and
 - (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
4. I have the power to correct any defect in the notice provided so doing does not cause injustice to the Council or the appellant. Correcting the notice to refer to

the relevant part of the Act would not alter the practical effect of the notice in any way. Accordingly, no injustice would occur and I will make that change.

Ground (c)

5. For the appeal to succeed on this ground, the appellant must show, on the balance of probability, that the matters stated in the notice do not constitute a breach of planning control.
6. In fact, the appellant concedes that there are no relevant permitted development rights that apply to the appeal property, which contains flats. The wooden building targeted by the notice is 'development' as defined at section 55 of the Act. I am told that this building replaced a previous one and that it was erected on the understanding that planning permission was not required, but neither matter has a bearing on the fact that this is a development which required planning permission.
7. For these reasons, the appeal on ground (c) fails.

Ground (a)

Main issues

8. The main issues are the effect of the development on:
 - The setting of Portland Towers; and
 - Living conditions at the rear ground floor flat at the property and the adjacent dwelling due to any loss of light or outlook.

The setting of Portland Towers

9. The appeal property is part of a characterful terrace. It is of brick construction, is rich in architectural features and design detail, and has been identified by the Council as a non-designated heritage asset. The building has modern single storey extensions at the rear. The brickwork of these is not a very good match for the main building, but they are low-key and do not detract significantly from the character of the building. The rear garden is a key element of the setting of the building and contributes to its significance.
10. The notice is targeted at one of 3 wooden buildings at the rear of 5-9 Portland Towers. It has a natural wood finish with a slate roof and is built on a brick plinth. The main elevation has a front door and 2 windows, both of a type that would normally be used in a dwelling. One end of the building is almost entirely glazed. Although different, the other 2 wooden buildings share some of the characteristics of the building targeted by the notice in terms of their materials, glazing and quality of finish.
11. The 3 wooden buildings are close together and I agree with the Council that they create a rather cluttered appearance. Furthermore, the building targeted by the notice is particularly close to the rear elevation of Portland Towers, so that it is 'read' together with the building in views of the rear elevation. Consequently, its wooden finish appears out of place and detracts from the setting of the building, harming its significance. Although boundary fencing, the other wooden buildings at the site and trees reduce public views of the building, it is nevertheless easily seen from Grenfell Road, from where its harm to the setting of Portland Towers is evident. It will also be in clear view from

the neighbouring Portland Cottage. Although it does not block views of the key features of Portland Towers, that does not alter my view that it appears incongruous and harms the setting of the building as a consequence.

12. My finding on this issue brings the development into conflict with Policy CS18 of the Leicester City Core Strategy, which seeks to protect heritage assets and their setting. The National Planning Policy Framework (the Framework) advises that, in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Living conditions

13. The wooden building is located to the southwest of the appeal property, and consequently there is some potential to cause overshadowing. However, it appears to me that sunlight reaching the rear of the ground floor flat will already be restricted by trees and the existing, larger wooden building, which the Council has previously decided not to take enforcement action against. Consequently, the effect of this additional building in terms of overshadowing will be limited.
14. The building is close to the rear of the appeal property and will clearly be prominent in views from the windows and doors serving the ground floor flat. However, it is fairly modest in its overall scale and is located to one side so that it is not directly in front of the glazed doors on the rear elevation. A window will be affected more, but that is a fairly modest opening and the glazed doors appear more important to the outlook and lighting of the flat.
15. The Council says there is conflict with the '45 degree rule' set out in its *Residential Amenity* supplementary planning document (SPD), but this is not explained in any detail. In any event, the SPD applies the rule with regard to the effect of extensions on neighbouring property, and I am not persuaded that it applies to this outbuilding and its effect on the host property.
16. The Council also raises the effect of the building on the neighbouring Portland Cottage. While the building is fairly close to the boundary, its orientation and fairly modest height means that it will not cause any harmful effect due to light loss or any overbearing impact in my judgement.
17. For these reasons I find that the development has not harmed living conditions at the appeal property or the adjacent dwelling. Accordingly, I find no conflict with Policy PS10 of the City of Leicester Local Plan, which is concerned with the effect of new development on residential amenity, or with the similar aims of paragraph 130(f) of the Framework.

Conclusion

18. While I have not found harm to living conditions or conflict with Policy PS10, my finding on the first issue and Policy CS18 leads me to conclude that there is conflict with the development plan as a whole. None of the information before me outweighs the harm I have found. Accordingly, the appeal on ground (a) does not succeed.

Ground (f)

19. This ground of appeal concerns whether the steps required by the notice exceed what is necessary to remedy the breach of planning control or remedy any injury to amenity which has been caused by the breach.
20. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the building. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a). Consequently, I do not regard the requirements as excessive. The appellant has not set out any alternative steps and it is difficult to understand what steps other than the removal of the building could address the Council's concerns.
21. For these reasons, the appeal on ground (f) fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter Willows

INSPECTOR