



Appeal Decision

Site visit made on 11 May 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Refs: APP/D1590/C/21/3278326 & APP/D1590/C/21/3278327 2 Crowstone Close, Westcliff-On-Sea, Essex SS0 8BB

- 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 made by Miss Vicky Parsons and Mr David Pepper against an enforcement notice issued by Southend-On-Sea Borough Council.
 - The enforcement notice was issued on 17 June 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a first floor side extension.
 - The requirements of the notice are to:
 - a) Remove the unauthorised first floor side extension.
 - b) Remove from the site all materials resulting from compliance with a) above.
 - c) Reinstate the single storey side extension to its former condition, or
 - d) Erect an extension in full accordance with either planning permission ref 18/2119/FULH or as amended by planning permission ref 19/00516/AMDT & 19/01323/NON.
 - The period for compliance with the requirements is 4 months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

Background

2. Planning permission (ref 18/02119/FULH) was granted in January 2019 for a first floor side extension overlying the existing kitchen/diner and, to a lesser extent, part of the garage and ground floor w/c. The approved drawings showed the extension overlain with a pitched roof stepped down from the main ridgeline. Subsequently, in May 2019, a further planning permissions (ref 19/00516/AMDT) was issued to partially extend the bedroom area approved under the earlier permission, involving an additional pitched roof section stepped down and recessed from the approved first floor extension. The second permission, running parallel to the initial consent, was then later modified by way of a non-material amendment applied for and granted in July 2019 under ref 19/01323/NON.
3. Correspondence then followed between the Council and the appellants during 2020 and 2021 regarding the manner of the development's implementation, with the Council identifying that the first floor extension was being built with a flat roof rather than the approved pitch and central ridgeline. The Council took

the view that a breach of planning control had occurred, and little or no attempt was being made to remedy the contravention.

4. In the circumstances, due to the extension's form - the enforcement notice describes it as *"a flat roof box style design with blue cladding which does not appear subservient to the main dwelling"* - the Council saw it expedient to issue an enforcement notice requiring for the first floor extension's removal, or its modification to comply with either of the planning permissions already granted in this respect.

The Appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
6. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
7. The appellants, in their representations, say that the Covid situation significantly interrupted the modification works to the extension, hence causing the delay. However, they stress that the extension is being built to accord with the approved drawings and no breach of control has occurred.
8. It appears to be the case that the Council was concerned as to the way the development was proceeding and the form the extension was taking. The appellants counter by indicating that, at the time the notice was issued in June 2021, the works were not complete and, due to financial difficulties brought on by the pandemic, the flat roof evident at the time was made watertight and a fascia and temporary guttering were installed as a stop-gap measure. This is understandable given that works could not apparently continue further at the time.
9. The appellants, in the appeal papers, have provided a photograph dated 10 October 2021 showing the pitched roof then under construction and my site visit observations confirm the creation of the pitched roof required. That said, the development was still not complete.
10. It would appear that the Council somewhat jumped the gun in this instance and should best have waited until the development was substantially complete before deciding that the extension's physical form was such that formal action was necessary. It would seem credible in the circumstances that complications arising from the pandemic had impacted on the appellants' ability to implement the approved development as could have been reasonably expected.
11. Nonetheless, whilst the Council might have delayed issuing the enforcement notice, I can sympathise with the Council's actions given the fact that works to the property had previously taken place without the benefit of planning permission, and enforcement investigations had been initiated as a consequence. Indeed, it would seem that these had been successful in bringing about the applications which sought to regularise the planning position.

12. I have had due regard to the Council's representations but, in the event, I have concluded that the Council's decision to issue an enforcement notice in this instance has proved premature. It still, of course, retains its powers to remedy any breaches regarding the development at issue, should they occur, at a later date. With hindsight, though, it seems clear to me that no material contravention had occurred at the time the notice was issued.
13. Although the above scenario would essentially suggest that an appeal under ground (b) should have been lodged instead, it follows, in that the development was proceeding/has proceeded in line with the planning permission(s) granted, that the appeal made is a sufficient defence in the circumstances.
14. Accordingly, the ground (c) appeal succeeds.

The appeal on ground (g)

15. The appeal on ground (g) is that the time period stipulated to comply with the enforcement notice's requirements is unreasonably short. Given that I am allowing the appeal made on ground (c) it is not necessary for me to consider this matter further.

Timothy C King

INSPECTOR