



Appeal Decision

Site visit made on 23 August 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal Ref: APP/H1515/C/20/3265903

Land known as St Ninians, Alexander Lane, Hutton, Essex CM13 1AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Nick Dawson, Marlborough Street Construction Ltd against an enforcement notice issued by Brentwood Borough Council.
- The notice was issued on 24 November 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a balcony not in accordance with drawing 13/23/03/C associated with approved planning permission 17/01195/FUL, within the development of St Ninians shown within the area etched in RED on the attached site plan ("Appendix 1").
- The requirements of the notice are to: 1. Remove the unauthorised balcony attached to the third floor flat; 2. Restore the building to the authorised design as set out in the approved drawing (13/23/03/C) associated with planning permission 17/01195/FUL; 3. Remove from the land all materials arising from compliance with steps 1 & 2.
- The period for compliance with the requirements is: 6 weeks from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(a) and (g) of the Act. 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. At my site visit it was clear that the first requirement of the notice had been complied with, in that the unauthorised balcony had been removed. This has implications for the appeal under ground (a) because the deemed planning application is made in respect of the unauthorised development as built and referred to within the notice.
2. There is no mechanism for me to incorporate any plans, other than that attached to the notice, into any deemed planning permission that may be granted. No plans have been provided which show the breach of planning control as it existed at the time the notice was served. Any re-erection of the balcony would constitute a separate act of development.
3. Proposed plans¹ have been provided as part of the appellant's final comments which have been described as showing the balcony which formed the subject of the notice but with taller and obscure glazed side panels. These were submitted as part of an application for planning permission², which the Council declined to determine. The proposed development shown on the plans submitted as part of the appellant's final comments would comprise a new balcony, materially

¹ Plan no. 13/23/11 dated January 2021

² The Council's ref: 21/00052/FUL

different to that enforced against, which no longer exists. It would not therefore comprise part of the breach of planning control stated in the notice.

4. Section 177(1)(a) of the Act allows me to grant planning permission in respect of the matters stated in the notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. As no part of the breach of planning control specified in the notice currently exists, there is no scope for planning permission to be granted in this appeal. The appeal under ground (a) and the deemed planning application do not therefore fall to be determined.

Ground (g)

5. For the appeal under ground (g) to succeed it should be demonstrated that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed. The appellant has claimed a period of 3 months would be reasonable to allow for the instruction of contractors and erection of scaffolding.
6. As the first requirement of the notice has been complied with, there is no longer any possibility of alleged harm to the living conditions of neighbouring residents by way of overlooking. This reduces the urgency for the requirements to be complied with. I am therefore satisfied that a compliance period of 3 months would be reasonable in this instance, and I shall vary the notice accordingly.

Conclusion

7. The appeal under ground (a) does not fall to be considered because the breach of planning control specified in the notice no longer exists. The appeal under ground (g) succeeds and an extended period of time is allowed for compliance with the requirements of the notice.

Formal Decision

8. It is directed that the enforcement notice is varied by the deletion of '6 weeks' and the substitution of '3 months' as the period for compliance. Subject to the variations, the enforcement notice is upheld.

L Douglas

INSPECTOR