
Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2023

Appeal A Ref: APP/C1435/C/22/3303791

Appeal B Ref: APP/C1435/C/22/3303792

Land at Appledore, Crowborough Road, East Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr and Mrs Jiri George Frantisek Krizek against an enforcement notice issued by Wealden District Council.
 - Appeal B is made by Mrs Hana Eliska Frantisek Krizek against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 22 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a side extension and rear porch.
 - The requirements of the notice are:
EITHER:
 - (i) Demolish, dismantle and remove the extension from the Land, including the removal of any foundations and/or footings.
 - (ii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirement.OR:
 - (a) Carry out works to reduce the height of the extension and alter the external cladding of the extension to match that of the front elevation of the dwellinghouse, to comply with the approved plans attached to planning permission WD/2019/1802/FR dated 7th July 2020.
 - (b) Finish/paint the external timber parts of the revised extension to match the colour of the existing horizontal cladding on the front elevation of the main dwelling.
 - (c) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are allowed on grounds (f) and (g), and it is directed that the enforcement notice be varied by:
 - 1) The addition of the following requirement in section 5 of the enforcement notice (what you are required to do): *OR: (a) Carry out alterations so that the extension complies with the terms of the Lawful Development Certificate reference WD/2022/1948/LDP, dated 13 September 2022.*

(b) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirement.

Time for compliance: Six months after this notice takes effect.

- 2) The deletion of 3 months and the substitution of 6 months as the time for compliance, so that the time for compliance in respect of each of the alternative requirements is 6 months.
2. Subject to these variations the enforcement notice is upheld.

Preliminary Matter

3. In reviewing the file, it appeared that the appeals could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the grounds of appeal and points in dispute.

The appeals on ground (f)

4. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
5. 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 by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
6. In this case the enforcement notice requires the extension to be demolished and all resultant materials be removed, or that it is altered so that it complies with planning permission WD/2019/1802/FR. As such, I find its purpose is to remedy the breach of planning control.
7. Since the appeal was submitted, a Lawful Development Certificate (LDC) (proposed operations) has been granted for a single storey conservatory to the side of the house, reference WD/2022/1948/LDP. The appellants suggested that the notice be varied to enable them to erect that conservatory, which is their preferred design option.
8. While permitted development rights cannot be claimed retrospectively, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
9. Although the requirements in the notice as issued do not exceed the purpose behind the notice, an obvious alternative would be to make the development comply with the terms of the LDC, that is a planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
10. The appellants' arguments regarding the quality of the build and that there have been no objections to the extension from residents or the parish council are matters which relate to planning merits.
11. However, where there is no appeal under ground (a) there is no deemed application for planning permission and, as such, there can be no arguments

about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.

12. For the reasons given, I find that it would be reasonable to vary the notice, to require that the extension either be demolished or, that it is altered to comply with the planning permission or the LDC. The appeals on ground (f) therefore succeed to this extent.

The appeals on ground (g)

13. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellants suggested that a period of 12 months would be reasonable, on the basis that they are scientists and need time to conclude their research, which is undertaken by them in the extension. Additionally, that they would have to employ others to carry out the work.
14. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellants are entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be.
15. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be carried out. The appellants' concerns relate to the time before works can commence - when their work is complete and when arrangements have been made.
16. Nevertheless, I note the letters of support for the appellants' work, and the petition of support signed by surrounding residents. The works required to comply with the notice will undoubtedly cause some disruption and, it appears, have an impact on the appellants' work.
17. Looking at the case in the round, the requirements to undertake the works within three months would place a disproportionate burden on the appellants.
18. Taking this and all other matters into account I conclude that the period for compliance should be extended, but to six months rather than the 12 sought. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellants. To this extent, the appeals on ground (g) succeed.

Conclusion

19. For the reasons given above, there is partial success on ground (f), and I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Felicity Thompson

INSPECTOR