



Appeal Decision

Site visit made on 22 May 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2023

Appeal Ref: APP/B1550/C/21/3287791

Land at Rosebud, The Chase, Ashingdon, Essex SS4 3JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Elizabeth Trigger against an enforcement notice issued by Rochford District Council.
 - The notice was issued on 19 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wraparound extension as shown hatched on the attached plan 2 and reprofiling and raising the ridge height of the original dwelling matching it to the ridge height of the extension to create habitable roof space.
 - The requirements of the notice are to:
 1. Make the necessary alterations to ensure that the development is in accordance with the approved lawful development certificate including the conditions to which that consent was granted reference 17/00604/LDC.
 2. Remove the flat roofed section and its foundations (shown cross hatched on the attached refused floor plan drawing 305.01) linking the side extension and the rear extension such that the arrangement results in an L-shaped building as shown on approved proposed plans dated 30th August 2017 on application 17/00604/LDC.
 3. Insert and install the door fenestration on the north elevation of the single storey side extension and brick up a section off the doorway to create a window to the East elevation of the single storey rear extension as shown on the proposed plans on 17/00604/LDC.
 4. Strip back and remove the roof tiles, trusses, roofing battens, sarking and insulation between the rafters then set aside for re use.
 5. On completing Step 4, return the roof of the original bungalow to its original profile remodel roof and reduce ridge height lowering the ridge on the overall roof of the building such that the overall height of the dwelling including the side and rear extension is no higher than 4 metres at the roof apex of the original bungalow as shown on the plans of application 17/00604/LDC, eaves height to be 2.6 metres. Site slopes, therefore, the ridge height taken from the ground of the original unaltered bungalow is approximately 4.8 metres and 4 metres from damp proof course.
 6. Remove any access to the space created at first floor in the roof void of the dual pitched building.
 7. Remove the roof lights serving the intended habitable space and this space should not be put to habitable floor space.
 8. Remove from the site, all resultant materials and debris arising from carrying out the steps above.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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. The enforcement notice is quashed.

Preliminary Matters

2. At the site visit I noted what appeared to be a change in levels of the land as part of the development. I queried this with the parties as if this was the case the breach as set out on the notice may not be correct.
3. The appellant confirmed that there had been no works undertaken on the site to change the levels of the land to enable the construction of the extensions. She confirmed that scrub was cleared, and digging was undertaken to lay foundations. She provided a photograph of the site at the time of the works.
4. The Council did not provide a definitive view on whether or not there had been a change in the levels of the land. It said that if reprofiling has occurred this matter should be regarded as an under enforcement breach of planning control. In response to the additional photograph provided by the appellant the Council considered that this demonstrated that the breach as described in the notice has occurred. It also noted that foundations had been laid for a wraparound extension and not the scheme as approved.
5. In the light of the additional evidence provided by the appellant and the comments from both parties, I am persuaded that my initial assumptions were incorrect and that there has been no change in land levels as part of the construction of the development which is the subject of the notice.

The Notice

6. An Enforcement Notice must meet the specifications set out in section 173 of the Town and Country Planning Act 1990 (the Act) which sets out the contents and effect of a notice. Defects which make a notice invalid generally fall into two categories, either the notice is null because it is defective on its face, or it is flawed in some way.
7. In this case the notice is not defective on its face and consequently it is not a nullity. However, the notice is flawed because the requirements are unclear. Section 176 of the Act allows the correction or variation of a notice in such circumstances subject to the test that such changes to the notice will not cause injustice to the appellant or the local planning authority.
8. Requirement 1 of the notice is as follows:

Make the necessary alterations to ensure that the development is in accordance with the approved lawful development certificate including the conditions to which that consent was granted reference 17/00604/LDC.
9. A plan has been attached to the notice which is annotated 'indicative plan only – 17/00604/LDC'. In order to comply with requirement 1 the appellant would have to make alterations to the development so that it complied with this plan. However, the LDC plan does not take account of the sloping nature of the site, consequently it is unclear how the development could be altered to accord with those plans.

10. Requirements 2 and 3 refer to the plans under reference 17/00604/LDC but it is not clear how these requirements relate to requirement 1 and whether they are an alternative to it.
11. Requirement 5 also refers to the LDC plans. It also notes the sloping nature of the site and references dimensions which are not given on the LDC plans. In so doing requirement 5 provides the appellant with an alternative to compliance with requirement 1. However, requirement 5 is drafted in such a way that it is not clear what this alternative is.
12. In particular in the final sentence of Requirement 5 there is a reference to ridge height. It is not clear how this relates to the ridge height of the rear extension as built on the sloping site and what changes would need to be made to the building to comply with Requirement 5.
13. I have considered whether I can correct or vary the requirements to address the lack of clarity which I have found. I could delete requirements 2 to 7 leaving the appellant to alter the development to accord with the LDC plans and remove any resultant materials from the site. However, this would not resolve the issues I have found with compliance with requirement 1.
14. Furthermore, deletion of requirements 2 to 7 would prevent the appellant from implementing an alternative scheme to that shown on the LDC plans which it appears the Council are content to make available to them. Given that the alternative scheme seems to seek to allow retention of additional elements of the as built scheme over and above the approved LDC scheme, this would cause injustice.

Conclusion

15. For the reasons given above, I conclude that the requirements of the notice are unclear. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
16. In these circumstances, the appeal on the grounds set out in section 174(2) (a) and (f) of the 1990 Act as amended does not fall to be considered.

Sarah Dyer

Inspector