



Appeal Decision

Site visit made on 12 June 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 16th August 2023

Appeal Ref: APP/F1610/C/22/3299840

Land at Fayre Court, Milton Street, Fairford, Gloucestershire GL7 4BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr J D Rees against an enforcement notice issued by Cotswold District Council.
- The notice was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the erection of a single storey extension within the area delineated by the red line boundary on the attached plan".
- The requirements of the notice are to:
 - 5.1 Remove the unauthorised extension to the residential dwelling as erected on the Land; and
 - 5.2 Re-instate the rear elevations to the dwellinghouse to their former arrangement and built form as they were immediately prior to the unauthorised development taking place using materials and finishes which match those of the existing dwelling; and
 - 5.3 Re-instate all window and door openings to their original positions and former arrangement as they were prior to the unauthorised development taking place, in a design which matches that of existing windows and doors to the rear elevations, as shown on the attached plan at Annex B "Survey of Existing – Floor Plans & Elevations", Drawing No. 0998/19/10, produced for the submission of planning application 22/00214/FUL; and
 - 5.4 Re-instate the low boundary wall shown in the attached photographs at Annex C, which existed prior to the unauthorised development taking place, and which separated the residential curtilage of Fayrecourt from adjoining meadow-land located North of the Land, using materials and finishes which match those of the existing boundary walls.
- The periods for compliance with the requirements are: step 5.1 within 6 months from the date the Notice takes effect and steps 5.2, 5.3 and 5.4 within 12 months from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matters

1. Since the enforcement notice (EN) was issued, the appellant has removed the unauthorised extension. In its place, a new extension, which has been granted permission by the Council under reference 22/00214/FUL (New Permission), is under construction. Nonetheless, the appeal before me must be determined with regard to the alleged breaches of planning control at the time the EN was issued. In turn, this decision concerns the extension as originally constructed.

Appeal on ground (f)

2. Pursuant to ground (f), the appellant alleges that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control.
3. On account of the permitted development rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), the appellant contends that the requirements set out in the EN are excessive. In particular, the appellant highlights that development comprising enlargements or alterations to an existing dwelling may be permitted pursuant to Article 3(1) and Class A of Part 1, Schedule 2 of the GPDO, subject to the development adhering to certain conditions and parameters. Such enlargements can include rear extensions.
4. Whilst it is not disputed that the development fails to meet the prescribed conditions and parameters set out in the GPDO, the appellant argues that the requirements of the EN could secure the implementation of an alternative fallback scheme, which would comply with the conditions and parameters set out in the GPDO. It is alleged that any such fallback scheme could incorporate components of the unauthorised development, thereby avoiding the need for complete removal of the extension and reinstatement of the appeal property to its former condition. However, notwithstanding the grant of the New Permission, no fallback scheme has been submitted as part of this appeal.
5. Nonetheless, where planning permission is granted after the service of an enforcement notice for development already carried out, then pursuant to s180(1) of the Town and Country Planning Act (1990) as amended, the EN will cease to have effect insofar as it is inconsistent with that permission. This means that the EN will cease to have in effect in relation to any components of the development which have subsequently been authorised by the New Permission. In turn, the New Permission already partly achieves the appellant's objectives in this regard. An alternative requirement allowing the extension to be amended in line with the New Permission is therefore not needed, as the New Permission will essentially supersede the requirements of the EN insofar as they are inconsistent with one another.
6. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control, being the unauthorised erection of an extension in this instance. The requirements set out in the notice must therefore achieve this purpose. Together, the requirements set out at paragraphs 5.1, 5.2 and 5.3 of the EN require removal of the unauthorised extension, and reinstatement of the appeal property to its former arrangement and appearance. These steps go no further than remedying the original breach of planning control as described in the EN. Indeed, any lesser steps would not properly achieve this purpose.
7. The requirement set out at paragraph 5.4 of the EN requires the reinstatement of a low boundary wall, which previously demarcated the boundary of the appeal property from the meadow to the rear. However, the removal of this boundary wall does not form part of the matters alleged to constitute the breach of planning control, which solely relates to the erection of an extension. The Council has suggested that removal of the wall risks part of the meadow to the rear of the property being subsumed into the rear garden of the appeal

property. This appears to form the justification for the requirement to reinstate the wall, at least in part, which is an entirely separate issue to the extension.

8. It is also not clear from the evidence whether removal of the wall was necessary to facilitate construction of the original extension erection, or whether its removal was instead a standalone building operation which was unrelated to construction of the extension. As contended by the appellant, it is possible that the prior demolition of the wall would not have needed planning permission. Indeed, Article 4 of The Conservation Areas (Application of Section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015 says the demolition of any wall or means of enclosure within a Conservation Area which abuts open space and is less than 1 metre high (which is true of the former wall in this instance), would not require consent from the Council. Whilst I draw no conclusions on this point, given the lack of clarity, I am unable to be satisfied that reinstatement of the wall would be necessary to restore the land to its former condition prior to the alleged breach taking place, especially in view of its removal receiving no mention in the allegation.
9. It also appears that the development now permitted by or carried out pursuant to the New Permission would physically prevent reinstatement of the wall. As above, the EN will cease to have effect insofar as it is inconsistent with the New Permission, as per s180(1) of the 1990 Act. This means the requirement to reinstate the wall in its former position is essentially redundant. Moreover, it appears from the plans approved pursuant to the New Permission that a new boundary wall will be erected along parts of the rear elevation to the dwelling in any event.
10. On the available evidence, I therefore agree that reinstatement of the wall goes beyond what is necessary to remedy the breach of planning control, as alleged in the notice. In turn, I have deleted the requirement to reinstate the wall from the EN. The appeal on ground (f) succeeds to that extent.

Appeal on ground (g)

11. Pursuant to ground (g), the appellant alleges that the period for compliance with the requirements of the EN falls short of what should reasonably be allowed.
12. The appellant has sought to extend the period for compliance with the requirements of the EN. The appeal on ground (g) was pursued on the basis that if granted, the New Permission would incorporate elements of the unauthorised development. Provided the time for compliance with the requirements of the EN was after determination of the New Permission, then if granted, the New Permission could therefore negate the need for complete demolition or removal of the unauthorised extension. An extension to the time for compliance was sought on this basis.
13. Given that the New Permission has now been granted and development pursuant to the New Permission is at a late stage, there is no reason why the periods for compliance with the requirements of the notice should be, or need to be, extended. The appeal on ground (g) therefore fails.

Conclusion

14. For the reasons given above, I conclude that one of the requirements of the EN exceeds what is necessary to remedy the breach of planning control. I shall therefore vary the enforcement notice prior to upholding it, and the appeal on ground (f) succeeds to that extent. However, for the reasons given, the appeal on ground (g) fails.

Formal Decision

15. It is directed that the enforcement notice is varied by the deletion of requirement 5.4 from paragraph 5. Subject to this variation, the enforcement notice is upheld.

James Blackwell

INSPECTOR