The Planning Inspectorate

Appeal Decision

Site visit made on 13 June 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2023

Appeal Ref: APP/Z0116/C/22/3307774
36 Stothard Road, Bristol BS7 9XL

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
- The appeal is made by Mr D Williams against an enforcement notice issued by Bristol City Council.
- The notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is without the grant of planning permission the erection of a detached building in the garden which is for a purpose non-incidental to the enjoyment of the dwelling house.
- The requirements of the notice are to demolish the building in its entirety and remove demolished materials from the land.
- The period for compliance with the requirements is three months.
- 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.

Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 (the 1990 Act) sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.

3. In this case, the requirements of notice are to demolish the building in its entirety and remove demolished materials from the land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

4. The appellant accepts that the building must be removed. However, they have requested under this ground that I allow the retention of the concrete floor of the building, along with its foundations, and the retaining walls to the west, east and north. This would maintain the lower ground level that has been created as a result of the development for retention as what the appellant describes as a 'sunken garden'. With the remainder of the development removed, the appellant considers that this would address the harm alleged in the reasons stated for issuing the enforcement notice and therefore overcoming any planning objection.

5. Moreover, the appellant is concerned that removing the retaining walls, floor and foundations would cause issues for the neighbour to the north, given the development's proximity along the shared boundary. There is also a concern that the removal of these features could cause prolonged harm to the amenity of neighbours from dust and noise associated with these removal works. It is also requested that the demolished windows, beams, insulation, doors and concrete blocks be allowed to be retained at the site for future permitted development projects, with all other materials being removed. To this end, I have been provided with alternative wording to vary the requirements.

6. The appellant acknowledges that an appeal on ground (a) is not being pursued to secure permission for the lower ground levels. They also point out that the notice does not require the site to be returned to its previous levels. Instead, they consider their proposal under ground (f) to be a matter of under enforcement, to retain a level change that would comply with permitted development.

7. However, in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act, the scope of an appeal on ground (f) is limited. Moreover, where an appellant has chosen not to pursue an appeal on ground (a), the Courts have held that an appeal on ground (f) is not an opportunity to introduce general planning considerations. Any lesser step that would not remedy the breach cannot be accepted through ground (f). The Act cannot be interpreted as allowing a submission that the requirements exceed what is necessary to remedy any injury to amenity where the purpose of the requirements is to be found wholly within s173(4)(a).

8. Notwithstanding the fact that there is little evidence to suggest that the retained development would meet the tolerances of any permitted development rights, the difficulty with the appellant's proposal is that such rights cannot be obtained retrospectively. It follows, therefore, that the retention of the floor, foundations and retaining walls would not have the benefit of deemed planning permission. The corollary of this is that retaining some of the development in situ and failing to remove the demolished materials associated with the unauthorised development from the land, would not achieve the purposes of the notice: namely, to rectify the breach of planning control that has taken place. Furthermore, whilst the notice does not require the site to be returned to previous levels, neither is alteration to ground level identified within the breach of planning control.

9. I have also considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me.

10. For these reasons, I conclude that the requirements of the notice are not excessive, and so the appeal on ground (f) must fail.

The appeal on ground (g)

11. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months for the demolition of the building and the removal of the demolished materials from the land.

12. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private

interest bound up in the development subject to the notice. In doing so, I must assume that the building subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice. Indeed, evidence of this harm can be found in the representations that have been received from local residents.

13. The appellant considers that the removal of the floor and foundations are a significant engineering operation, and while a three month period would be acceptable to remove the building, this element, along with the removal of the retaining wall stubs will be a time consuming and difficult operation that will extend beyond three months. They advise that the base foundations will have to be grubbed out with power drills taking account of services and impact on neighbours, and this could require Party Wall matters and possibly a structural engineer. The appellant therefore considers that a period of six months would be a more appropriate timescale to comply with the requirements of the notice, this would also assist him in reusing the demolished materials for future development projects.

14. However, none of the appellant's claims in these respects have been substantiated with any evidence. In fact, during my visit I observed that a substantial proportion of the building had already been demolished. Therefore, its removal is already well underway.

15. Extending the compliance period to six months, as suggested, would perpetuate the breach of planning control and the associated harm. Therefore, in weighing the balance between public and private interests, I consider that the public interest of expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance. I am, therefore, not persuaded that there is a need to extend the period for compliance with the requirements of the notice, and I am satisfied that the period of compliance stated in the notice is a proportionate response to the breach of planning control that has occurred.

16. Accordingly, the appeal on ground (g) fails.

Other matters

17. I acknowledge that the appellant has tried to engage with the Local Planning Authority (LPA) in an attempt to resolve the breach of planning control. This has included a request for pre-application advice. It appears that due to resourcing issues, the LPA have been slow to respond to the appellant's correspondence. Nevertheless, these matters do not provide sufficient justification to lead me away from my conclusions in this case.

Conclusion

18. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control that has occurred and that the period for compliance with the requirements of the notice does not fall short of what is reasonable. Therefore, the appeal is dismissed and the enforcement notice is upheld.

J M Tweddle

INSPECTOR