



Appeal Decision

Site visit made on 15 August 2023

by an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/K1935/C/22/3304138

Land and premises known as 134 Marymead Drive, Stevenage SG2 8AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Kirbyshire against an enforcement notice issued by Stevenage Borough Council.
 - The notice was issued on 5 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of (1) a single-storey front extension and (2) outbuilding / structure on the Land, in the approximate positions marked with a cross on the attached plan.
 - The requirements of the notice are:
 - (i) Remove the single-storey front extension and the outbuilding / structure to the rear of the property;
 - (ii) Remove from the land all building materials arising from compliance with requirement (i) above, and restore the land / dwellinghouse to its condition before the breach took place by levelling the ground and re-seeding with grass / repair front elevation of the dwellinghouse and make good following the removal of the extension.
 - The period for compliance with the requirements is: 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
 - the deletion of Section 5(ii), and its substitution with the words,
 - “(ii) Remove from the land all building materials arising from compliance with requirement (i) above, and restore the land / dwellinghouse to its condition before the breach took place by repairing the front elevation of the dwellinghouse and making good following the removal of the extension.”
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

3. The appellant has raised issues that do not necessarily fit into the grounds of appeal (c), (f) and (g) formally made by the appellant. Despite the appellant's comments that he has not made a ground (d) appeal, these matters, which relate to the age of structures and whether enforcement action could be taken at the time the notice was issued, would normally be considered as a ground (d) appeal. As the Council have had the opportunity to comment on these matters, and have done so, I can deal with them as a ground (d) appeal without prejudice to the Council. The appeal therefore proceeds on grounds (c), (d), (f) and (g).

The Notice

4. The appellant considers it is not clear precisely which buildings are the subject of the notice, and that it therefore fails to comply with Section 173(2) of the Act. He also considers it is not clear what steps he is required to take in order to comply with it.
5. The relevant parts of Section 173(1) and (2) require an enforcement notice to state the matters which appear to constitute the breach of planning control in a manner which enables any person on whom it is served to know what they are. In simpler language, the Planning Practice Guidance¹ advises that an enforcement notice should enable every person who receives a copy to know exactly what constitutes the alleged breach of planning control.
6. The relevant parts of Section 173(3) and (4) also require that an enforcement notice specify the steps to be taken in order to remedy the breach by restoring the land to its condition before the breach took place.

The allegation:

7. The enforcement notice alleges a 'single-storey front extension' and an 'outbuilding/structure on the land' and identifies 'approximate positions' with two 'X' marks on the enforcement notice plan.
8. The enforcement notice plan is an Ordnance Survey map of a scale of 1:500, and is of a suitable scale to show the land subject to the notice and the surrounding land. Although the boundaries of other plots beyond the land are very faint, the red line clearly depicts the boundaries of the land subject to the notice. The map is sufficiently accurate in terms of scale and proportions to enable approximate positions to be shown on it with a suitable degree of accuracy, and for recipients of the notice to know which areas are indicated by the 'X' marks.
9. In relation to the front extension, the 'X' on the plan is located centrally across the width of the plot immediately adjacent to the front of the building. Although the appellant advises it is formed of two interconnecting extensions, at my site visit it appeared to be a single structure across the full width of the plot, with roofing felt laid only on one side, and divided internally.
10. I note the presence of a side extension which abuts the front extension subject to the allegation. However, despite their proximity to each other, and the covering of the roof between them, they are different structures. They are also distinguishable, in that photographic evidence provided by the Council showed that the side extension did not protrude beyond the frontage of the original dwelling. The term 'single-storey front extension' in the approximate position marked with an 'X' on the enforcement notice plan therefore adequately describes the extension erected.
11. In relation to the outbuilding/structure, the Ordnance Survey base mapping of the enforcement notice plan depicts covered areas at either end of the rear yard, with an 'X' in a central area of the rear yard, where covered areas are not shown.

¹ Paragraph: 018 Reference ID: 17b-018-20140306

12. At my site visit I noted there were more structures in the rear yard than indicated as covered areas on the base plan. However, there was only one structure in the central area in the approximate location marked with an 'X'. Although the 'X' marked on the plan is marginally more to the northern side of the yard, and the structure extends to the southern boundary, there is no ambiguity about which structure the notice relates to as there are no other structures in that vicinity.
13. I therefore find the notice to be clear and unambiguous in its description of the buildings/structures it alleges, and that it does so with sufficient clarity for recipients of the notice to know what is alleged and which buildings/structures it relates to.

The requirements:

14. In relation to the requirements of the notice, the appellant advises he is not clear what is required by requirement 5(ii) which, among other things, requires restoration of the land to its condition before the breach took place by levelling the ground.
15. The appellant advises that it is not clear what is meant by 'levelling of the ground', that there has been no allegation of a change in levels, and that there is no explanation of what levels are required to be achieved.
16. I consider the extent to which this requirement is necessary below in relation to the ground (f) appeal. But for the purposes of Section 173(3) the requirement to level the ground is limited to the extent to which the land is restored to its condition before the breach took place. In that respect, I am satisfied that the requirement is sufficiently clear.

The appeal on ground (c)

17. Appeals on ground (c) are made on the basis that the matters alleged (if they occurred) do not constitute a breach of planning control.
18. The appellant's case is largely that the alleged breaches may be immune from enforcement action through the passage of time, and I have considered these matters as part of the hidden ground (d) appeal below.
19. Section 57 of the Act requires planning permission for the carrying out of development on land. The definition of development in Section 55 includes building operations, and there is no evidence before me that any of the exemptions apply to the development alleged in the notice. Section 171A states that carrying out development without the required planning permission constitutes a breach of planning control.
20. I have not been advised that any planning permission or Lawful Development Certificate² has been issued for any part of the development. The Council state that the extension, being larger than 3 square metres and within 2m of the boundary with a highway, exceeds the 'permitted development'³ requirements for porches. It states that use of the rear garden area as a storage yard was 'exempt' from enforcement action and that, on the basis of its use (not being

² Certificate of Lawfulness, existing or proposed under Sections 191 and 192 of the Act

³ Under Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended) (GPDO)

residential), the outbuilding structure requires planning permission from the Council. The Council also consider that the outbuilding/structure would not be 'permitted development'⁴ even if considered residential development, being within 2m of the boundary and over 2.5m in height. Therefore, planning permission would not be granted for the development under Article 3(1) of the GPDO.

21. The appellant has not disputed these matters, neither have I seen any evidence which would lead me to do so.
22. In conclusion, with the evidence before me, and on the balance of probabilities, the development alleged is a breach of planning control.
23. The appeal on ground (c) therefore fails.

The appeal on ground (d)

24. Appeals on ground (d) are made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control.
25. The appellant considers it may be that the matters alleged to be breaches of planning control are, at least in part, immune from enforcement action through the passage of time. That would require him to demonstrate that the extension and outbuilding/structure had been substantially completed four or more years before the enforcement notice was issued in July 2022.
26. The onus is on the appellant to provide evidence to support his case and I have found that the allegation is sufficiently clear which buildings/structures the notice relates to.
27. The appellant believes he last built any structure within the site in early 2018, but cannot be certain of precise dates of construction as he built it himself and is not able to provide any evidence in terms of builder's receipts, invoices, or other documents.
28. The Council's evidence is that they received a formal complaint of the construction of an unauthorised structure in the rear garden area on 24th February 2020, and a complaint was made relating to the construction of a front extension on 16th June 2020. They also refer to an enforcement investigation reference 19/00682/ENF which they describe as relating to a "structure being built in back garden which may be for property for rental and structure to the front of the property". In any event, these dates are within the 4 years preceding the issue of the enforcement notice.
29. Considering all the information before me, there is insufficient evidence to demonstrate, on the balance of probabilities, that enforcement action could not be taken against the extension or the outbuilding/structure at the time the enforcement notice was issued.
30. The appeal on ground (d) therefore fails.

⁴ under Schedule 2, Part 1, Class E of the GPDO

The appeal on ground (f)

31. Appeals on ground (f) are made on the basis that the steps required by the notice exceed what is necessary to remedy any breach, or as the case may be, injury to amenity.
32. The Council advises that the purpose of the notice is to remedy the breach of planning control, and considers the steps required to be the minimum necessary to do so. It seems to me that, since the notice alleges the erection of a front extension and an outbuilding, and it requires the removal of the extension and outbuilding, along with the restoration of the land to its former condition, then the purpose of the notice is to remedy the breach by restoring the land to its condition before the breach took place under Section 173(4)(a).
33. Requirement 5(i) of the notice requires the removal of the extension and outbuilding/structure. Requirement 5(ii) requires the removal of the building materials arising from (i). It also requires restoration of the land to its condition before the breach took place 'by levelling the ground and re-seeding with grass', among other things.
34. In relation to requirement 5(i), removal of the extension and outbuilding/structure are necessary to remedy the breach. No lesser remedy has been proposed by the appellant, and none was apparent to me at the time of my visit. As there is only one structure in the approximate location of the 'X' on the plan in the rear yard, reference to the 'outbuilding/ structure' in the singular appropriately avoids unnecessary effects on other outbuildings/structures in the rear yard. I have therefore seen no obvious alternatives that would remedy the breach with less costs or disruption to the appellant.
35. In relation to requirement 5(ii), I have not seen evidence that demonstrates whether or not alterations were made to land levels associated with the extension or outbuilding/structure, or whether any of the land was previously laid to grass. Consequently, a requirement to restore the land to its condition before the breach took place would be sufficient to remedy the breach, and it is not necessary to require the levelling or seeding of the ground.
36. I therefore conclude that, insofar as the notice requires the levelling of the ground and re-seeding with grass, the steps required by the notice exceed what is necessary to remedy the breach. I shall therefore vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

37. Appeals on ground (g) are made on the basis that the time for compliance with the requirements of the notice is too short. The notice requires compliance with its requirements within 12 weeks.
38. The extension and outbuilding/structure are both of simple construction, and as varied, the restoration works are not extensive. Neither does the appellant argue that they could not physically be removed, and the land and dwelling restored to their condition before the breach took place, within 12 weeks.
39. Nevertheless, the appellant advises he has a passion for tractors and has a private collection. He advises he has been using the appeal site for the storage, repair and maintenance of various vehicles for many years. And that without structures on the land to provide shelter for them, and his tools and

equipment, he will need to find alternative storage premises or seek planning permission for alternative structures on the land. He considers 12 months would be more appropriate for him to do so, particularly considering the time required for preparation and consideration of a planning application, or to find and secure suitable property.

40. However, I have not seen compelling evidence of the appellant's need for either the extension or the outbuilding/structure, or of the consequences of their removal. The front door of the house remains in place and the extension functions as a covered enclosed space, but not one functioning as part of the interior of the dwelling. At the rear there was an agricultural tractor parked in the partially open-sided outbuilding/structure at the time of my visit. But it also contained a large number and variety of other items, including used building materials, personal and household items, and did not appear to be laid out as a workshop for the repair and maintenance of vehicles, except insofar as it provided a covered area of sufficient height to contain the tractor. It was also not the only outbuilding/structure in which tools and equipment could be stored. Overall, although it may be desirable to the appellant to have additional time to seek to secure alternative provision, I am able to attribute only limited weight to this private benefit.
41. I must also balance the appellant's case for additional time against the harm to the character and appearance of the Broadwater Conservation Area (BCA). Great weight should be given to the conservation of designated heritage assets, and the appellant's case for additional time would not outweigh the harm to the BCA. Overall, for the reasons above, I therefore consider a 12 week compliance period to be reasonable.
42. The appeal on ground (g) therefore fails.