



Appeal Decision

Site visit made on 6 December 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/B1415/C/22/3307588

Land known as 130 Bohemia Road, St Leonards-on-Sea TN37 6RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr K Davies against an enforcement notice issued by Hastings Borough Council.
 - The enforcement notice was issued on 12 September 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a pitched roof structure on the roof of the premises.
 - The requirements of the notice are to:
 - 1) Demolish the unauthorised roof structure in its entirety, the location of which is marked with an 'x' on the attached plan;
 - 2) Following demolition of the unauthorised roof structure in its entirety, remove all resulting rubbish and debris from the land.
 - The period for compliance in full with the requirements is within 2 months from the date on which this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice's allegation be reworded to read as follows:

"Without planning permission, the erection of a shed-like roof extension."
2. Subject to this correction the appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a shed-like roof extension at 130 Bohemia Road, St Leonards-on-Sea TN37 6RP, subject to the following condition:
 - 1) The development, hereby permitted, shall relate only to the roof extension's superstructure, not its cladding, and the roof extension shall be removed within nine months of the date of failure to meet any of the following criteria:
 - (i) Within two months of the date of this decision, full details and samples of the external finishes of the rooftop structure, along with a timetable of implementation, shall be submitted to the local planning authority;

- (ii) Within six months of the date of this decision the details shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State;
- (iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined by the Secretary of State. If the details are approved the case will be effectively closed;
- (iv) The approved scheme shall have been implemented in accordance with the approved timetable.

Application for Costs

3. An application for an award of costs was made by Mr K Davies against Hastings Borough Council on its decision to issue the enforcement notice. This application is the subject of a separate decision.

Matters concerning the Enforcement Notice

4. To better focus on the development involved, and for clarity, I shall reword the notice's allegation. At my site visit, when observing the development from the street, I also noted that an air conditioning unit had been installed and is apparently affixed to the wall of the roof extension. However, the Council has not included this item in its allegation and it is not therefore targeted by the notice. Accordingly, I shall not include this element in the revised allegation.

Background and the site's planning position

5. This end of terrace property was previously a retail fish shop with residential accommodation above.
6. In November 2022, the Council granted planning permission (HS/FA/22/00039) for extensions and alterations to the building involving the creation of a two-bed dwelling. It followed on from an earlier proposal which had involved extensions and alterations to create a carbon zero two-bed dwelling; a decision which had been subsequently upheld on appeal.
7. The permitted scheme, part retrospective in nature, allowed for the property to be altered and extended upwards, along with a new fenestration arrangement, and the addition of a new pitched roof and a front facing gable feature. The roof extension did not, though, form part of the above application.
8. At my site visit I noted that the above works had been implemented and, along with the extension to the rear, the building has been subject to extensive internal reconfiguration works.
9. The property has also been altered at roof level with the addition of the development targeted by the enforcement notice. This structure, which is only accessible internally from the dwelling's second floor serves as the plant room to the eco-house which is still in the process of being fitted out.
10. Due to the roof extension's form and positioning the Council saw it expedient to issue an enforcement notice requiring for its removal.

The appeal on ground (d)

11. The appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms.
12. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. Such cases cannot take into account planning merits or impact and, as such, my decision has to be based on evidential fact and, where applicable, case law.
13. Section 171B(1) of the 1990 Act, as amended states:

'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed'.
14. Section 55(1A) of the above Act says that building operations include structural alterations of or additions to buildings. S55(2) then goes on to say that the carrying out for the maintenance, improvement or other alteration of any building or works shall not be taken to involve development providing it does not materially affect the external appearance of the building.
15. Various photographic evidence has been provided by both main parties and, from the images, it has to be concluded that by 12 October 2022 – the date the notice was issued – the roof extension, as a structure, had been erected, and was covered in weather sheeting.
16. Substantial completion is not always clear and is a matter of fact and degree. Where a building has been built in stages, each stage may open a new chapter in its planning history.
17. A Google Street image, dated September 2021, shows the property's external structural alterations, later approved in November 2022, in situ, save for the cladding. It also clearly shows the roof extension still covered with weather sheeting. From the evidence given at the Hearing, the structure, once unwrapped, was clad with brightly coloured panels, giving the appearance of a beach hut. The Council has provided a photograph from October 2022 which shows the roof extension in its current form.
18. In such instances for an appeal to succeed on ground (d), the whole of the alleged development must be substantially completed and the EN may require the removal of all works. It was held in *Singh v SSCLG & Sandwell BC* [2010] EWHC 1621 (Admin) that a development must be regarded holistically. Where some parts are left incomplete then the whole development becomes unlawful.
19. The Courts have decided that the four year period does not begin until the whole operations are substantially complete. In the judgement of *Ewan Developments Ltd v SSE & North Norfolk DC* [1980] JPL 404 it was held that the development as a whole can be enforced against and there is no saving for any part of it which may have been carried out more than four years before the enforcement notice.

20. So, as is the case in this particular instance, where it is alleged that there has been more than one operation, the first may be outside and the second inside the four year period.
21. The court judgement of *Sage v SSETR* [2003] UKHL 22 was raised at the Hearing, but this concerned issues raised where a planning permission had already been granted, and is less directly applicable.
22. In this case I must therefore conclude that the development has been altered to the extent that s55(2) cannot apply as the cladding added has materially affected the dwelling's external appearance. The Planning Portal provides a related yardstick on this matter in indicating that cladding may be carried out without having to first apply for planning permission provided the materials are of a similar appearance to those used in the construction of the dwelling's exterior.
23. In other words the resultant appearance of the cladding was such that the alterations were sufficiently material as to require the benefit of planning permission. Accordingly, any immunity from planning control would have then been lost. The Council was therefore entitled to issue an enforcement notice requiring for the roof extension's removal.
24. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

25. The main issue is the development's effect on the character and appearance of the host dwelling and the surrounding area.

Reasons

26. The appellant, at the Hearing, in referring to the roof extension's appearance, indicated that he had added the brightly coloured cladding to make a statement due to his annoyance at the delays in the planning process. He had also contemplated adding the model of a fish to the roof to illustrate the property's previous use.
27. From my site visit I find that those alterations and extension to the dwelling, visible from the street, and approved in November 2022, have substantially changed the building's appearance. Not only has the significant increase in height with an additional storey, flush with the building line below, accentuated the verticality, the heavy, bronze coloured cladding emphasises the building's increased bulk. The resultant appearance is now one of a bookend to the terrace below.
28. In the context described the roof extension, although made more visually obtrusive due to its distinctive cladding, appears as a novelty feature addition to a building which has lost its characteristic original form. As such, the building is now a definite anomaly, although its individualism has attracted local support and certain residents at the Hearing made reference to the dwelling's sustainability and that its physical alterations are appealing features of local interest.

29. Policy DM1 of the Hastings Development Management Local Plan (LP), the only local policy cited in the enforcement notice's reasons for issue, is a general policy concerned with design principles and one which requires an assessment of visual impact, including the height, scale and form of the development, which should be appropriate to its location.
30. Here, with the roof extension's appearance the appellant has clearly taken inspiration from the nearby seaside location and the clear overplay is one of individual taste. I can understand a certain visual appeal but I can also appreciate the Council's stance.
31. The superstructure's appearance, whilst its height, scale and form, is at odds with the immediate surroundings, could potentially be tempered to be less obtrusive and to blend in better. It is not per se of poor design. I am also mindful of its purpose given the functional need for the plant room within this eco-house and the various changes carried out. On balance, I find that the superstructure itself is not harmful to the character or appearance of the host dwelling nor the surrounding area.
32. All in all, given the particular circumstances, I conclude that, alongside the permitted alterations already undertaken to the building, I am satisfied that the roof extension is not prejudicial to the objectives of LP policy DM1. I shall, though, reserve judgement as to being prescriptive on any change to its current cladding.
33. At the Hearing the appellant indicated that he would be prepared to re-clad the structure, likely in response to the Council's suggested condition that full details of the intended materials shall be submitted to the local planning authority for assessment and, if considered acceptable, for subsequent written approval.
34. In the event it may ultimately be the case that the Council feels it can accept the structure, as currently clad, in its entirety. However, that, of course, depends on the appellant's actual intentions. I am therefore imposing a condition, appropriate to retrospective permissions which will not only require negotiation and submission between the appellant and the Council. It will also ensure implementation of the agreed finish.
35. If the condition's requirements are not met the wording will enable the development to be enforced against.
36. The second condition suggested by the Council is unnecessary as any further alterations or extensions to the building's roof, should they occur, would require assessment as to their materiality or otherwise.
37. Given my decision to allow the DPA it is not necessary for me to consider the ground (f) appeal.

Timothy C King

INSPECTOR