



Appeal Decision

Site visit made on 26 January 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2024

Appeal Ref: APP/C1055/C/22/3312525

43 Hillcrest Road, Chaddesden, Derby DE21 6FJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Sergejs Lavrinovics against an enforcement notice issued by Derby City Council.
 - The notice was issued on 1 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey extension to the rear of the dwelling and an outbuilding in the rear garden ("the Unauthorised Works").
 - The requirements of the notice are to:
 - 5.1 Reduce the size of the extension so that it projects no more than 4 metres beyond the rear wall of the original dwelling house, the position of the original rear wall is as shown on the attached plan DCC 2.
 - 5.2 Construct the rear elevation of the altered extension so that when complete its appearance replicates that shown on the attached drawing entitled Design Sheet, dated 08-12-2021 – page 2 submitted under ref: 21/02119/FUL, with no windows or openings in these elevations other than shown on this plan.
 - 5.3 Complete the external appearance of the extension using materials that match those used on the walls and roof of the existing dwellinghouse.
 - 5.4 Remove all resultant debris from the Land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. Appeal reference APP/C1055/D/22/3301955 for the erection of rear extension to the bungalow house and the erection of outbuilding at the rear of the site was dismissed on 1 December 2022.

Ground (f): Reasons

3. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
4. The requirements of the notice require the single storey extension to be modified. There is no requirement to remove the outbuilding and, were I to uphold the notice, as set out in section 173(11) of the Town and Country Planning Act 1990 (as amended)(the Act) planning permission would be

granted for the outbuilding by virtue of section 73A of the Act. I raised with the parties whether this was the Council's intention.

5. The Council advises that, subsequent to the enforcement notice being served, it has granted planning permission for the outbuilding, along with an amended scheme for the extension, application reference 23/00329/FUL. I am satisfied that the omission of a requirement to remove the outbuilding was intentional and that the Council intended to under enforce with respect to the outbuilding.
6. Whilst I do not have full details of the aforementioned planning permission before me, section 180 of the Act provides where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. It is therefore not necessary for me to consider it further as part of this appeal.
7. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land 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.
8. In its Statement of Case (SoC), the Council sets out the steps which the notice requires to be completed and states they are intended to remedy the alleged breach. However, while the notice includes a requirement to construct the rear elevation of the altered extension so that its appearance replicates that shown on Design Sheet dated 08-12-2021 under reference 21/02119/FUL, planning permission was not granted for the scheme. The Council is therefore not remedying the breach by making the development comply with the terms of a planning permission, it is simply referring to the plan so that the recipient of the notice knows what they have to do.
9. The Council also concludes in its SoC that it served the enforcement notice to remedy an injury to amenity by under enforcing an [sic] alleged breach of planning control to make the development **broadly** (my emphasis) in compliance with permitted development rights. This conclusion contradicts its earlier statement regarding the purpose of the notice.
10. While reducing the extension so that it does not extend beyond the rear wall of the original dwellinghouse by more than 4 metres would accord with the limitations set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), the extension was constructed without planning permission and would only have planning permission after the enforcement notice is complied with by virtue of section 173(11) if the Act, not as permitted development. Furthermore, the extension exceeds 4 metres in height and so the requirements would not bring it in line with permitted development rights¹. In my view, therefore, the purpose of the notice is to remedy injury to amenity.
11. In support of this appeal, the appellant has put forward an alternative scheme to address the Council's concerns, with a flat roof section. In their final comments, the appellant has also drawn my attention to amended plans which

¹ A.1(f)(ii) of Class A, Part 1 of Schedule 2 of the GPDO sets out that development is not permitted by Class A if the enlarged part of the dwellinghouse would have a single storey and exceed 4 metres in height.

have been submitted to the Council, which includes a reduction in the depth of the rear extension and stepping in the extension along the boundary with No 45.

12. However, there is no appeal under ground (a)² and my powers to vary the enforcement notice mirror those conferred on the local planning authority to under-enforce under section 173(4)(b) of the Act. It is only buildings, works or activities in existence when the enforcement notice is issued which can benefit from section 173(11), not a different scheme.
13. The schemes suggested by the appellant are both significantly different to the works in existence when the enforcement notice was issued. In formulating the requirements, the Council has already taken into account the fallback position afforded by the GPDO. There are no lesser steps which would achieve the purposes of the enforcement notice with less cost and disruption. Consequently, the requirements do not exceed what is necessary to remedy the injury to amenity and so the appeal under ground (f) must fail.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR

² Section 174(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.