



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 25th April 2024

Appeal Ref: APP/N4720/C/23/3335236

32 Lingfield Approach, Leeds LS17 7HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Kathy Noble against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 20 November 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, erection of porch to front elevation.
 - The requirements of the notice are:
Step 1 – Demolish the unauthorised porch to the front and remove entirely from the Land all debris resulting from the demolition operation.
Step 2 – Restore the Land to its former condition prior to the erection porch to the front structure.
 - The period for compliance with the requirements is: Four 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.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of the text 'Four months.' from the requirements paragraph, and its substitution with the text: 'Six months.'
2. The appeal is dismissed and the enforcement notice, as amended, is upheld.

Preliminary Matters

3. The determination of this appeal relates to grounds (f) and (g), which are grounds of mitigation. As I was able to assess these matters from the written evidence alone, it was not necessary for me to carry out a site inspection.

Ground (f)

4. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
5. The purposes of an enforcement notice are set out in section 173 of the Act. They are either to remedy the breach of planning control or to remedy injury to amenity. Since the notice requires the demolition and removal of the porch, the purpose is clearly to remedy the breach.
6. In terms of lesser steps, the appellant's first suggestion is to implement an alternative scheme for which she has applied for planning permission. The Council confirm that, on 22 February 2024, the appellant submitted a planning application, ref: 24/01060/FU, for a single storey extension to the front of the appeal property. This application has a determination date of 14 May 2024.
7. The appellant is free to implement any extant planning permission once the enforcement notice is complied with. However, even if the application for a

single storey front extension had already been granted, it could not be included in the notice because it would amount to a positive requirement that would likely alter the previous condition of the building. It would therefore be excessive because it would go beyond the aim of the notice.

8. The second suggested lesser step would be to reduce the size of the porch so that it accords with the permitted development (PD) rights available at the property. Householder PD rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended. Schedule 2, Part 1, Class D of the GPDO provides PD rights for the erection of a porch outside any external door of a house, providing: the ground area (measured externally) of the structure would not exceed 3sqm; no part of the structure would be more than 3m above ground level; and no part of the structure would be within 2m of any boundary of the curtilage of the dwellinghouse with a highway.
9. However, the GPDO does not grant PD rights retrospectively. In other words, a porch at the appeal site would only be permitted by the GPDO if it met the limitations set out above when it was constructed. As the porch that is the subject of the notice exceeded those limits when it was built, it will not be permitted under the GPDO if or when it is later altered. Nevertheless, the appellant is entitled to construct a porch that falls within the GPDO limitations once the notice has been complied with.
10. In conclusion, then, I find that the requirements are not excessive, and no lesser steps have been identified that would achieve the aim of the notice.
11. The appeal on ground (f) therefore fails.

Ground (g)

12. Ground (g) is that the time given to comply with the notice, in this case four months, is too short.
13. The appellant currently fosters children on behalf of the Council. She is concerned that, dependent on the timetable of the appeal, she may be fostering a child with special needs and/or safeguarding issues when the decision is issued. As she cannot be certain, in advance, of the needs of foster children at the time of the appeal decision, the appellant requests an extended period of six months. This would allow her time to liaise with the Council to make sure that her fostering duties do not coincide with the carrying out of the notice requirements.
14. The Council confirm that the appellant was first notified of the breach in July 2022, and so the unauthorised development has been in place for approaching two years at the time of writing. However, an appellant is entitled to assume success on any ground of appeal, and so the length of time that has passed is not in itself a reason not to extend the period of compliance.
15. The key question for ground (g) is what is reasonable. The task is essentially to balance the public interest in the notice being complied with expeditiously against the private interests of the appellant and her household. The porch is a relatively small structure, and its removal should not be particularly time consuming or difficult. On that basis, four months should be sufficient time to allow the requirements to physically be carried out.

16. However, I have taken into account the circumstances surrounding the appellant's fostering duties, and I recognise that there is a need for vulnerable children not to be subjected to the possible disruption of having works done to their home.
17. I therefore conclude that six months is a reasonable time scale for the requirements of the enforcement notice to be carried out, allowing some leeway for the appellant to plan ahead for her clients.
18. To that extent, the appeal on ground (g) succeeds.

Conclusion

19. The appeal is dismissed and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR