



Appeal Decision

Site visit made on 25 September 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2024

Appeal Ref: APP/D1590/C/23/3318701

79 The Drakes, Shoeburyness, Essex SS3 9NY

- 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 Frank F Jensen against an enforcement notice issued by Southend-on-Sea Borough Council.
 - The enforcement notice was issued on 17 February 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the installation of radio antennae to the property.
 - The requirements of the notice are:
 - (a) Remove the three (3) poles and antennae attached to the north flank wall of the building; and
 - (b) Remove the two (2) poles and antennae attached to the rear elevation of the building; and
 - (c) Remove the two (2) free-standing poles and antennae from the rear part of the site; and
 - (d) Remove from site all materials resulting from compliance with (a), (b) and (c) above.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is:

- corrected by deleting the words "as shown edged bold black on attached location plan at Annex B" under section 2 of the enforcement notice (the land affected) and deleting the site plan attached to the enforcement notice, labelled 'Annex B'.
- corrected by deleting the existing requirement 5 (a) and replacing it with the following:

"(a) Remove the three (3) poles and antennae attached to the flank wall of the building; and"
- Varied by deleting the words "28 days" within section 5 of the enforcement notice, under the subsection entitled 'Time for compliance' and its replacement with "6 months".

2. Subject to these corrections and variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The appellant states that the site plan attached to the notice, labelled 'Annex B,' is inaccurate in so far as it includes a smaller area of land than is registered for the appeal site. However, it is clear from the address on the notice what the property is and therefore the notice as a whole identifies the property correctly. The appellant appears to have understood the allegation and, in my opinion, the minor error on the site plan does not render the notice unclear. It is necessary however to correct the notice by deleting the incorrect site plan from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.
4. The first requirement of the notice, under section 5 (What you are required to do) inaccurately refers to the flank wall of the building as the 'North' elevation, but it is clearly the 'East' elevation. My understanding of the notice is not affected by this, and nothing within the appellants' submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
5. The appeal has only been lodged under grounds (a) and (f). However, it is clear from the substance of the appeal submission that the appellant is also seeking to appeal under ground (c), in so far as they state that the 2 poles that are in the rear car park, are freestanding and therefore do not require planning permission. As the Council have provided detailed comments on the appellant's statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.
6. The appellant also states that there is a weather station installed and queried whether the notice includes this. However, the appellant clarified during the site visit that the weather station is positioned at the front of the property and the Council Officer confirmed during the visit that the notice did not include this. As such, the appeal does not concern the weather station.
7. In addition, a late letter of representation has been submitted by the appellant concerning his health. Both parties have been given the opportunity to comment on this letter and the Council have provided additional comments, which also concerns the period for compliance. I have therefore also determined this appeal under ground (g) also, and I am satisfied that neither party would be prejudiced by my inclusion of this.

The appeal on Ground (c)

8. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. To succeed on this ground, the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
9. As outlined above, the appellant states that the 2 poles and antennae that are free standing in the (rear) car park do not require planning permission. However, no further evidence has been submitted to substantiate this claim.

10. The two poles and antennae in the rear garden are both of a reasonable size and go beyond what would normally be associated with a domestic property in a residential area. As a matter of fact and degree, in the absence of any further evidence, and on the balance of probability, I conclude there has been a breach of planning control, and the appellant has not discharged the onus on them to demonstrate otherwise.
11. Accordingly, the appeal fails on ground (c).

Appeal on ground (a), the deemed planning application (DPA)

Main Issue

12. The main issue is the effect of the development upon the character and appearance of the host building and area.

Reasons

13. The appeal site relates to a modest two-storey terraced property located within a predominantly residential area, characterised by similar two-storey residential properties, which provides a relatively uniform layout, scale and design to the area.
14. However, given their overall number, height, scale and prominence, the poles and antennae positioned to the side and rear elevation and within the rear car park form a large, obtrusive and incongruous feature in the street scene which is at odds with the prevailing residential character of the street, where the majority of properties only have a standard UK television arial or satellite dish.
15. I conclude that the development harms the character and appearance of the host building and area, in conflict with Policies KP2 and CP4 of the Southend on Sea Core Strategy, 2007 (CS), and Policy DM1 of the Southend on Sea Borough Council Development Management Document, 2015 (DMD). Amongst other things, these require all new development to respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design.

Conclusion on Ground (a) and the DPA

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development harms the character and appearance of the building and area, in conflict with the development plan taken as a whole. However, none of the other matters raised by the appellant, including the previous installations of antennas at the property outweighs this harm. There are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
17. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) and the DPA should fail.

The appeal on Ground (f)

18. The appeal on this ground is "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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

19. The appellant states that the notice requires the total removal of the antennae including the TV aerial. However, it is clear from my site visit that the poles and antennae installed go beyond a standard UK TV aerial, and the requirements would not prevent a standard UK TV aerial from being installed at the property. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
20. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

21. This ground of appeal is that the time given to comply with the notice is too short. The period for compliance stated in the Enforcement Notice is 28 days. However, the time for completing the requirements should be what is proportionate and reasonably considered necessary to complete the requirements. In light of the appellant's personal circumstances, and the Council's comments in relation to this, I consider that this period should be extended to 6 months.
22. In my opinion, the 6 months would strike a more reasonable and proportionate balance. The Council also have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion.
23. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR