



Appeal Decision

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2024

Appeal Ref: APP/K0750/C/24/3339836

12-14 Borough Road, Middlesbrough TS1 5DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) (as amended). The appeal is made by Tees View Developments Ltd against an enforcement notice issued by Middlesbrough Development Corporation (the LPA).
- The enforcement notice was issued on 14 February 2024.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission, ref 20/0912/FUL, granted on 1 July 2020 (the 2020 permission).
- The development to which the permission relates is conversion of existing retail and residential units to form 12 no. student studio flats (sui generis) with associated alterations to front, three-storey rear extension and rear dormer window.
- The conditions in question are no 2, 4 and 5 which state that:
 - 2. The development hereby approved shall be carried out in complete accordance with the following plans:
 - a. Site Location plan drawing 2016/01 A dated 29th June 2020
 - b. Proposed site plan drawing 2016/02 A dated 29th June 2020
 - c. Existing and Proposed ground floor plan 2016/03/B dated 30th June 2020
 - d. Existing and proposed first floor plan drawing 2016/04 A dated 29th June 2020
 - e. Existing and proposed second floor plan drawing 2016/04 A dated 29th June 2020
 - f. Existing elevation drawing 2016 06 A dated 15th April 2020
 - g. Existing elevation drawing 2016/07 sheet 1 of 2 dated 3rd April 2020
 - h. Proposed Elevation drawing 2016/08 C dated 29th June 2020
 - i. Proposed elevation drawing 2016/09 REV B dated 29th June 2020
 - 4. The ground floor windows on the west side elevation of the rear extension and the ground floor of the rear elevation of the original building shall be opaque glazed to a minimum of level 3 and must be implemented on installation and retain in perpetuity.
 - 5. The windows on the west side elevation of the first and second floors of the rear extension hereby approved must be opaque glazing to a minimum of level 3 and fixed, to be implemented on installation and retained in perpetuity.
- The notice alleges that the conditions have not been complied with in that: development being carried out not in accordance with the approved plans (Condition 2) and the subsequent breach of Conditions 4 and 5 (Opaque Windows).
- The requirements of the notice are to:

Front (South) Elevation

- At ground floor level, remove the three windows within the front (south) elevation of the lean-to extension and install three windows as shown on approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020).
- At ground floor level, install fascia board detailing as shown on the approved plans (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020).
- At first floor level, remove the central window, directly below the roof light, and replace with a top opening window as shown on the approved plan (ref: Proposed elevation drawing 2016/08 C Dated 29th June 2020) with an upper frame included.
- At first floor level, remove the double window and replace with a top opening double window as shown on the approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020) including the side bar detailing and the cill below the window.
- At second floor level, install the arched window detailing above the windows within the front gable roof.

Rear (North) Elevation

- At second floor level, remove the cladding to the dormer window and finish with the approved render as shown on approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020).

Side (East) Elevation

- At ground floor level, install the coping stone on the wall below the railings as shown on approved plan (ref: Proposed elevation drawing 2016/08 C dated 29 June 2020).
- At ground-floor level, remove the window and replace with a window as shown on the approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020) with cill and header detailing included.
- At first-floor level, remove the window and replace with a window as shown on the approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020) with cill and header detailing included.
- At second-floor level, remove the window and replace with a window as shown on the approved plan (ref: Proposed elevation drawing 2016/08 C dated 29th June 2020) with cill detailing included.

Side (West) Elevation

- At ground-floor, first-floor and second-floor levels, remove the lower panel of glass within each window and replace with opaque glazing to a minimum of level 3 on the Pilkington scale (as shown on the approved plan (ref: Proposed elevation drawing 2016/09 REV B dated 29th June 2020)).
 - The period for compliance with the requirements is: 24 weeks.
 - The appeal is proceeding on the grounds 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.

Procedural Matters

2. Since the appeal proceeds solely on ground (f) of S174(2) of the Act, I consider a site visit is not necessary as the appeal can be considered solely on the written evidence submitted.

The Enforcement Notice

3. The appeal process requires both the appellant and the LPA to submit a copy of the enforcement notice to which the appeal relates. The appellant submitted a notice which took effect on 4 March 2024, the LPA submitted a notice which took effect on 18 March 2024. Aside from the dates, the two notices are identical. The LPA indicates that the discrepancy is because the appellant has submitted a notice which was issued first by the LPA but then withdrawn under S173A of the Act. The LPA issued a further notice on 14 February 2024. That is what the LPA has submitted. The appellant has confirmed that is the notice they intended to appeal against. I have determined the appeal on that basis.
4. The enforcement notice is not dated in Section 7. However, there is no statutory requirement for an enforcement notice to contain the date it is issued. Rather, S173(8) of the Act states that a notice shall specify the date on which it is to take effect. Section 7 is clear that the notice would have taken effect on 18 March 2024 had an appeal not been made against it beforehand. S172(3) states that the service of the notice shall take place (a) not more than 28 days after its date of issue; and (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

5. The heading of the enforcement notice is dated 14 February 2024. Thus, I am satisfied that, despite the omission of the date in Section 7, the enforcement notice is dated correctly and that the notice meets the requirements of S172(3).

Appeal on ground (f)

6. In an appeal on ground (f), it is necessary for the appellant to demonstrate that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control stated in the notice, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
7. S173(4) of the Act sets out that the purpose of an enforcement notice is either, (a) to remedy the breach; or (b) remedying any injury to amenity which has been caused by the breach.
8. The notice states that it seeks to remedy the breach of planning control. It is targeted against a breach of conditions 2, 4 and 5 of the 2020 permission. Namely, that condition 2 has been breached in several respects where the completed development does not accord with the approved development as depicted in the plans. Moreover, conditions 4 and 5 are said to have been breached in that windows have been installed in the development without opaque glazing where the conditions state there should have been.
9. For the most part, the notice requires the elements of the breach to be remedied by removal and replacement with windows, fascia board detailing, render and boundary treatment in accordance with the 2020 permission. On that basis I am satisfied the purpose of the notice is to remedy 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.
10. Nevertheless, there are several elements of the breach which the notice does not required to be remedied. Namely: the eaves height of the single storey lean-to extension; the omission of a rooflight; the stepped projection of the rear extension; the construction of a double width dormer on the rear elevation; the installation of two windows as opposed to one on the same elevation; the height of the railings; the design of the railings; a dormer on the east elevation of greater height and width than approved; the omission of header and cill details on windows on the west elevation and a dormer window of greater height and width than approved on the west elevation. To that end, the notice effectively under-enforces as it could have required those elements of the breach to be remedied but has not done so. Thus, planning permission will be treated as having been granted for those elements of the breach on account of S173(11) of the Act, provided all the requirements of the notice have been complied with.
11. The appellant has put forward an amended form of development for consideration. The submissions, including the proposed plans, indicate that some elements of the breach would be remedied in accordance with the requirements of the notice to carry out the development within the terms of the 2020 permission.

12. However, the approved fascia board detailing would be omitted. Moreover, the requirement to install top opening windows as approved on the south elevation would not be achieved. Instead, the appellant proposes to install a retro-fitted Georgian bar across the windows. Furthermore, the appellant proposes to maintain the omission of the approved glazed arched window detailing on the second floor of the south elevation. In addition, the appellant proposes to retain the cladding on the north elevation which has been installed in breach of the approved rendered dormer.
13. As a result, the appellant's proposed amendments would not remedy the breach of planning control since a number of elements of the breach which the notice requires to be removed and installed in accordance with the 2020 permission, would be retained not in accordance with the 2020 permission.
14. Moreover, given there is no ground (a) appeal, it is not open to me to consider the planning merits of the alternatives put forward by the appellant. My remit is confined to consideration of whether the requirements of the notice go beyond what is necessary to remedy the breach of planning control. For the reasons set out above, they do not.
15. On that basis, the appeal on ground (f) fails.

Conclusion

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

J Whitfield

INSPECTOR