



Appeal Decision

Site visit made on 11 November 2024

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Appeal A Ref: APP/T3725/C/23/3323230

Lillington Auto Services, 126 Cubbington Road, Lillington, Leamington Spa CV32 7AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Herminder Singh Cheema against an enforcement notice issued by Warwick District Council.
- The notice was issued on 26 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, removal of the roofing material and enlargement of existing building in height to create more than a single level (hereinafter known as "the breach").
- The requirements of the notice are to:
 - (i) Remove permanently all new material used in the alteration of the building.
 - (ii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above and restore the building to its condition before the Breach took place and reinstate the pitched roof to the same/similar standard as was in place prior to the Breach occurring.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (e), (b), (c) and (f), of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with correction in the terms set out below in the Formal Decision.

Procedural Matters

1. Notwithstanding the appeal form, at the request of the Planning Inspectorate the appellant has subsequently confirmed that the appeal is made by Mr Herminder Singh Cheema.

The appeal on ground (e)

2. Ground (e) is concerned with whether the enforcement notice was properly served as required by s172(2) of the 1990 Act. This provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
3. In a ground (e) appeal the burden of proof is firmly on the appellant and the test is the balance of probability.
4. The Council's unchallenged statement is that having obtained details from the Land Registry the notice was served on Mr Oliver Barnsley at the appeal site and also at 16 School Lane, Royal Leamington Spa CV31 1TQ. These details are also the same as the addressee details contained in the Council's appeal notification letter.

5. Given the evidence, despite ill health and absence from the appeal site, it is clear that Mr Barnsley has been able to make representations regarding the appeal. Moreover, there is no evidence of any substantial prejudice. The appeal on ground (e) therefore fails.

The appeal on ground (b)

6. In order to succeed on a ground (b) appeal, the appellant must show, on the balance of probability, that the matter alleged had not occurred at the date of the notice.
7. The appeal property is a garage premises. The appellant submits that the Council has failed to accurately set out the matters which appear to constitute the breach of planning control. The appellant claims that the works undertaken have not created more than a single level as alleged, but merely installed an internal staircase to an existing mezzanine floor. Moreover, the appellant has suggested alternative wording for the alleged breach of planning control to reflect the works carried out which, they submit, include:- replacement of the double rear gable roof with a flat roof to match the existing height of the former parapet roof, enclosure of the first floor flat roof element on the side of the building with a flat roof no higher than the existing parapet roof, a small rear extension to the building and insertion of new windows in the rear elevation.
8. Section 173(1)(a) of the Act sets out that an enforcement notice must state "the matters which appear to the local planning authority to constitute the breach of planning control." An enforcement notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are. In deciding whether a notice satisfies the statutory requirement, a test is applied to determine whether the notice fairly tells the recipient what they have done wrong and what they must do to remedy it. The recipient must also be able to find out from within the four corners of the document what they are required to do.
9. Section 176(1) states that "On an appeal under section 174 the Secretary of State may – (a) correct any defect, error or misdescription in the enforcement notice, or (b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority." The Courts encourage a very wide-ranging use of the power to correct notices, which can extend to making significant changes to the terms of the notice to put it on a proper footing.
10. Notwithstanding the comments regarding the internal staircase, the appellant has provided drawings and confirmation of the matters which constitute the breach of planning control which include replacement of the roof and enlargement of the building. Albeit the allegation does not accurately reflect the breach of planning control it is not hopelessly ambiguous or uncertain so that the appellant does not know what they have done wrong and what they must do to remedy it. Thus, I disagree that the notice should be dismissed as suggested by the appellant. The notice must, however, fairly tell the appellant what they have done wrong. Correcting the allegation to more accurately reflect the development which has taken place would address the appellant's case and would put the notice in order. Doing this would not cause injustice to the appellant as the change is not substantial and is part of the breach alleged by the notice.

11. The Council has made no comment on the appellant's submissions regarding this matter. However, its reasons for issuing the notice relate to the effect of the appeal development on the character and appearance of the area. Correcting the notice in this way would not prejudice the Council's reasons for issuing the notice and thus, there would be no injustice caused to the Council.
12. I conclude that, for the reasons set out, the appeal on ground (b) succeeds in part. The corrected allegation is the basis for my subsequent findings.

The appeal on ground (c)

13. For the appeal on ground (c) to succeed the onus of proof is on the appellant to demonstrate that the matter alleged does not constitute a breach of planning control. The questions are whether the matters represent development for which planning permission is required and, if so whether planning permission has been granted. The onus of proof is on the appellant to show that there has not been a breach of planning control and the standard of proof is the balance of probabilities.
14. In their appeal statement no submissions are made concerning the ground (c). Under ground (c) the appeal form states, "the tenant undertook the work and or it is not in breach of any planning control and or is no addition to what previously existed."
15. Notwithstanding whom is responsible for carrying out the works, a breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act, and includes 'the carrying out of building, engineering, mining or other operations in, on, over or under land.'
16. Based on the appellant's submissions and the Council's photographs, it is evident that the works undertaken constitute development under s55(1) of the Act for which, s57 says, planning permission is required. I have been provided with no cogent evidence that planning permission has been granted either expressly or by way of a development order. Thus, there has been a breach of planning control as alleged and the appeal on ground (c) therefore fails.

The appeal on ground (f)

17. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notices to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent removal of all new material used in the alteration of the building, removal of all resultant building materials and rubble and restoration of the building to its condition before the breach took place, the purpose of the notice is clearly to remedy the breach.
18. The appellant submits that the works do not create a risk or endangerment and would not have been refused planning permission. Whether or not the appeal development has been carried out safely is not a matter for consideration under ground (f). Moreover, no appeal has been brought on ground (a) and an appeal on ground (f) cannot be used to consider the planning merits or to bring about a deemed application for the appeal development. In these circumstances, the only point at issue under ground (f) is whether the

enforcement notice's requirements exceed those necessary to achieve the purpose which in this case is to remedy the alleged breach of planning control. The appellant has suggested no lesser steps to achieve that purpose.

19. In order to remedy the breach of planning control, it is not excessive to require the removal of the appeal development and all resultant material and rubble. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

21. It is directed that the enforcement notice is corrected by:

- 1) the deletion of the words "without planning permission, removal of the roofing material and enlargement of existing building in height to create more than a single level." from paragraph 3 and their substitution with the words "without planning permission, removal of the roofing material and enlargement of existing building."

22. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR