



Appeal Decision

Site visit made on 8 January 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2025

Appeal Ref: APP/A1530/C/22/3312148

8 Speedwell Road, Colchester, Essex CO2 8DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Jade Horne against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 28 October 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission the erection of a single storey, flat roofed, extension. ("the Activity").'
- The requirement of the notice is to demolish and/or dismantle the single storey flat roofed side extension and remove all resulting materials from the land.
- The period for compliance with the requirement is 4 months.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (the Act) (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.

Decision

1. It is directed that the enforcement notice is varied by:
 - (i) Deleting the words '*4 months*' from the period for compliance contained in paragraph 5 of the notice and replacing them with '*6 months*'.
2. Subject to the variation, the appeal is dismissed, 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.

The appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. Dwellings along Speedwell Road are largely two storey, consist of a mix of red brick and render and follow a linear pattern of blocks of 4 terraced dwellings. The appeal property is at the end of a block of 4 terraces which is located towards the end of Speedwell Road close to the junction with Fingeringhoe Road. The location of this block means that it sits at an angle to the road.
5. The development consists of a flat roofed single storey extension which is clad in tongue and groove stained timber horizontal cladding. It extends out from the side of the appeal property up to the boundary with No 10 filling the gap between the two dwellings. The development is wider at the front than the back due to the shape of the gap. The development has replaced an access gate to the rear garden and a garage type structure with dark wood. Filling the gap completely with

one structure which has horizontal wooden cladding and a domestic front door and window is visually confusing and at odds with the more traditional character of the surrounding area.

6. The development does not benefit from planning permission granted for enlarging a house by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Schedule 2, Part 1, Class A due to its width and lack of matching materials to the original dwelling. The whole of the development is therefore unauthorised.
7. The appellant has referred to a fallback position in the context of ground (a). With 'fallback,' I need to address whether if planning permission is refused, the fallback would take place and would be less desirable than that for which planning permission is sought. However, reliance upon permitted development rights would not allow an extension of similar dimensions in terms of length or materials. I am therefore unable to attach any weight to a 'fallback' position.
8. Whilst the appellant refers to the development as a modest addition, its corner location in line with the front of the appeal property, its size and design and use of materials means that it is prominent and incongruous addition to the existing streetscene. The development does harm the character and appearance of the area.

Alternative Developments

9. Section 177 (1)(a) of the Act states that planning permission can be granted for the matters constituting a breach of planning control in relation to the whole or any part of the building. The appellant seeks to bring the development within permitted development rights by reducing the width of the existing building and altering the external appearance. Painting the cladding is suggested but that is likely to highlight the structure and not address visual harm.
10. Alternatively, cladding would be removed and cement boards would be fixed to existing battens and then the structure would be rendered to match the original property. It is not clear if all or part of the cladding would be removed or what colour is proposed for the render when references are made to 'suitable' or 'matching colours.' As details of the works including the final appearance of an altered structure are not known, I am unable to consider whether what is proposed forms part of the development or if planning permission should be granted and if so, with what conditions. The same issues arise in terms of seeking to alter the existing development by way of conditions.

Conclusion on ground (a)

11. For the reasons given, I do find that the development does harm the character and appearance of the area and there is insufficient information available to assess the proposed alternative developments. It is therefore contrary to Policy DM15 of the adopted Section 2 Local Plan (2022) which, amongst other things, states that all development must be designed to a high standard and positively respond to its context and enhance the character of the site and its surroundings. It is also contrary to Policy SP7 of Section 1 of the Local Plan (2021) which, amongst other things, requires all development to respond positively to local character and context.

The appeal under ground (f)

12. An appeal on ground (f) is that the requirements of the notices exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
13. As the requirement is to demolish, the purpose of the notice is to remedy the breach. The appellant is proposing that the requirement be amended by reducing the width of the development and painting or rendering it in a matching colour to accord with permitted development rights. Whilst the appellant considers that such alterations are relatively simple, no wording for an alternative requirement is provided. I have already addressed under ground (a) the uncertainty with regard to what exactly is proposed in terms of materials and colour as an alternative.
14. Requiring the development to comply with Class A in terms of size and materials is not precise enough when non-compliance with an enforcement notice is a criminal offence. In the absence of or a planning consent or a Lawful Development Certificate, it is not possible, to draft an alternative requirement with sufficient precision for the appellant to know what she has to do. The requirement to demolish is not excessive when the purpose of the notice is to remedy the breach and the whole of the development is unauthorised. The appeal under ground (f) must therefore fail.

The appeal under ground (g)

15. An appeal under ground (g) relates to the period of compliance which is currently 4 months. The appellant has requested a period of compliance of 6 months due to the difficulties of securing a suitable contractor. The Council does not object to a variation to the compliance period of 6 months. A six month compliance period would also allow time for the appellant to discuss alternative options with the Council and to pursue any necessary consents.
16. Were the Council to grant permission, Section 180 of the Act provides that 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. I will amend the notice to allow for a 6 month compliance period. The appeal under ground (g) therefore succeeds.

Conclusion

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

E Griffin

INSPECTOR