



Appeal Decision

Site visit made on 5 February 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal Ref: APP/W2465/C/23/3319668 303-305 Catherine Street, Leicester LE4 6GG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Suryakant Patel against an enforcement notice issued by Leicester City Council.
- The notice was issued on 9 March 2023.
The breach of planning control as alleged in the notice is 'Without planning permission:
The construction of a porch and canopy to the front of the Property
Unauthorised increase in height to roof over an existing extension to side of Property
Construction of a rear extension and canopy to ground and first floor
Construction of a dormer to rear of properties
Construction of mono pitched roof to outbuilding to rear of Property
Construction of unauthorised structure (pergola).'
- The requirements of the notice are
 1. Reduce and restore height of roof to the two storey side extension as was previously at property to front and rear of 305 Catherine Street as shown on photograph A attached to the notice.
 2. Demolish dormer to rear of 305 Catherine Street
 3. Demolish extension and canopy to Ground and First Floor of both properties
 4. Demolish outbuilding to rear of 303 Catherine Street
 5. Demolish the pergola to the rear of both 303 and 305 Catherine Street
 6. Remove all resultant materials from the property as result of complying with the above steps
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The parties were invited to make comments with regard to the wording of the notice prior to the site visit taking place. The Inspector indicated that elements of the notice lacked clarity and that her view was the proposed amendments would cause injustice. However, the Council then indicated a change of position with regard to the outbuilding element of the notice and the appeal proceeded to a site visit. However, having now visited the site, the position with regard to the notice needs to be re- considered.

The Notice

3. There are a number of areas where the wording of the notice lacks clarity. 'The Property' as defined in the Notice under the heading 'Land Affected' is 303 and 305 Catherine Street. However, the Council has subsequently explained that what

is being enforced against is now a single dwelling and not two separate dwellings. The reasoning for the notice does not address that the properties that were previously part of a terrace namely No 303 and 305 Catherine Street are no longer separate properties but form a new single dwellinghouse. The breach alleged in the notice consists of six different elements. Three of the elements refer to the Property, one element refers to the properties, and two elements refer to neither.

4. No house numbers are used in the allegation. However, the requirements other than the requirement to remove materials refer specifically to either 305 or 303, both 303 and 305 or 'both properties' even though "the Property" is defined as both 303 and 305. The term 'the Property' has not been used consistently in the allegation and the requirements which makes it difficult to assess what is being enforced against in the absence of photographs to supplement the wording.
5. The first element refers to the construction of a porch and canopy to the front of the Property. At the front of the house, there are two doors that could be considered to be front doors and two canopies although one canopy is larger than the other. There is no requirement in the notice to remove any canopy or porch from the front of the house which results in under-enforcement under Section 173(11) of the Act. The effect of the statutory provision is to grant planning permission for any elements of the allegation under- enforced against in the event of the notice being upheld when all of the requirements of a notice are complied with.
6. Whilst the Council now states that the notice was referring only to the canopy outside what was No 303, it also states that the porches and canopy to the front are not significantly harmful and action is not targeted at them. The reasons for issuing the notice do not cover these matters. It is also not clear why the Council has included the canopy outside No 303 and not the other canopy or why there was any reference to any canopy or porch in the notice if the Council does not wish to enforce against these features.
7. The second element of the allegation refers to 'Unauthorised increase in height to roof over an existing extension to side of Property.' The reasons for the notice do refer to the increase in height above the two storey extension at 305 Catherine Street. The corresponding requirement states 'Reduce and restore height of roof to the two storey side extension as was previously at property at front and rear of 305 Catherine Street' as shown in photograph A attached to the notice. The reference to both 'as was previously' and 'as shown' in the photograph lacks clarity particularly when there is no photograph of the rear roof.
8. The third element of the allegation refers to construction of a rear extension and canopy to ground and first floor. The corresponding requirement states 'Demolish extension and canopy to ground and first floor of both properties.' The addition of the word 'rear' does provide clarity to that wording.
9. The fourth element of the allegation refers to the construction of a dormer to rear of properties. However, the corresponding requirement states 'Demolish dormer to rear of 305 Catherine Street'. The Council subsequently explained that it is under-enforcing as the corresponding requirement requires demolition of the dormer to the rear of 303 Catherine Street only. In order for the appellant to respond to the notice and lodge his grounds of appeal, he needs to understand what he has done wrong and what he is required to do. The issue with the dormer is relevant to what

the Council is seeking to achieve at roof level if the notice were to be upheld. The Council has made no reference in its reasoning to the previous planning permission¹ which permitted certain works including a dormer to part of what is now a single dwellinghouse. There is no requirement to include previous planning permissions in the reasoning. However, as the Council has chosen to include elements in the allegation which are not either not enforced against at all or in part, the reasoning provided does not address the anomalies or provide any clarity when the requirements do not flow from the allegation.

10. It is not clear what the first requirement which includes reducing and restoring the roof height to what was previously at property to front and rear as shown in paragraph A attached to the notice means. It is also not clear if the requirements intend to leave half a dormer with an open side following partial demolition which would be granted planning permission under Section 173 (11) of the Act, in the event of the notice being upheld upon compliance with the other requirements.
11. The fifth element of the notice is that the allegation referred to the construction of mono pitched roof to outbuilding to rear of Properties. However, the corresponding requirement required the removal of the outbuilding even though the allegation only related to the roof of the outbuilding. As stated by the appellant, such a change fundamentally changes the meaning of the breach. As it would cause injustice to widen the allegation to include the outbuilding, the Council therefore proposed that that part of the allegation and corresponding requirement be deleted from the notice.
12. However, the presence of the outbuilding is relied upon by the Council in its reasons for alleging that the outbuilding, pergola and ground floor extension collectively effect the living conditions of occupiers of the appeal dwelling in causing a loss of private amenity space. The outbuilding which the Council wished to enforce against in this notice forms part of that assessment of amenity space.
13. The Council also relies upon the loss of amenity space with regard to sixth element of the allegation and corresponding requirement which relates to the pergola. Whilst this part of the allegation and corresponding requirement is straightforward, the reasoning with regard to the alleged loss of private amenity space assumes that the pergola, ground floor extension and outbuilding are being enforced against when the Council only included the roof of the outbuilding in the allegation.
14. The appellant states that 'the requirements as stated are considered to be excessive and in places vague, resulting in issues with enforcing the works.'² He refers extensively to the planning permission granted on 15 July 2021 as an alternative. However, before assessing the grounds of appeal and whether or not that permission is still extant, the notice including the requirements has to be understood from the four corners of the document. Whilst there are elements of the notice that can be clarified, the notice as a whole lacks clarity particularly with regard to the main roof and the dormer.
15. Whilst, the Council has sought to correct some of the issues with the notice during the appeal process, deleting elements whilst leaving elements in that the Council now states it did not intend to enforce against is confusing. Significantly, it is also

¹ Ref 20200189

² Paragraph 5.13 Appellants Grounds of appeal

not clear with the existing wording what work is required to comply with the notice in the event of the notice being upheld. Whilst I can correct any defect, error or misdescription in the enforcement notice or to vary its terms, I have to be satisfied that any correction or variation will not cause any injustice to the parties. Any further amendments to the wording of the allegation or the requirements are likely to cause injustice to the appellant who cannot add to or alter his grounds of appeal. The notice is therefore invalid.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance.
17. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (f) of the 1990 Act (as amended) do not fall to be considered.

E Griffin

INSPECTOR