



Appeal Decision

Site visit made on 20 May 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Appeal Ref: APP/X3540/C/24/3343189

Land at 12 Holland Road, Felixstowe, Suffolk IP11 2BA

- 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 Mr Dennis Clifford against an enforcement notice issued by East Suffolk Council.
 - The enforcement notice was issued on 26 March 2024.
 - The breach of planning control as alleged in the notice is: Without the planning permission the erection of a ground floor rear extension and air conditioning unit ("the Unauthorised Development") shown edged in blue on the attached photographs in Appendix A.
 - The requirements of the notice are to:
 - (i) Permanently remove from the Property the Unauthorised Development shown edged in blue on the attached photographs in Appendix A.
 - (ii) Permanently remove from the Property any materials and or fixtures and fittings arising from compliance with (i) above.
 - The period for compliance is four months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Preliminary Matters

2. On 7 May 2024 a s78 appeal against the Council's decision to refuse retrospective planning permission for 'an enclosed amenity area and installation of air conditioning unit' was dismissed, thereby upholding the Council's decision on the basis that the development has an unacceptable impact on the occupiers of nos 10 and 14 Holland Road in terms of loss of outlook and light due to an over-dominant impact. This decision represents a significant material consideration in my assessment of the deemed planning application which here falls for consideration.
3. Being unable to gain access to the premises I viewed the development from the alleyway to the property's rear. I noted that scaffolding, weatherproof sheeting and a corrugated roof now surround and shroud the extension which adjoins no 12's rear elevation and it was not possible to view the unauthorised development in its entirety as full access along the alleyway has been impeded by a wooden gate below the sheeting.

4. Irrespective of the above I note that the enforcement notice was issued on the day following the previous Inspector having visited the site. Accordingly, from the observations set out in his decision letter, and the fact that no appeal has been made under ground (b) - ie that the alleged breach of control had not occurred as a matter of fact at the time the notice was issued – I am in no doubt that the unauthorised development was in situ on 26 March 2024.

The appeal on ground (d)

5. An appeal under ground (d) requires that the appellant successfully demonstrates, on the balance of probability, that the breach of control, involving, in this instance, unauthorised operational development, was substantially completed in situ by a particular point in time before the date of the enforcement notice being issued. Accordingly, it is necessary that the evidence in support of the lawfulness claim has precision and is unambiguous.
6. Here, given that the notice was issued prior to 25 April 2024, when the relevant provisions of the Levelling up and Regeneration Act 2023 came into effect, it must be proved that the structure targeted was in situ and substantially complete on or before 26 March 2020 ie four years prior to the date of the enforcement notice's issue, and had remained in place throughout.
7. To expound, once an enforcement notice has been issued the clock effectively stops and the time that subsequent elapses does not count towards potential immunity from planning control. Where immunity is claimed the decision is reached, not on planning merit and/or impact, but instead on evidential fact, relevant legislation and, where appropriate,
8. In assessing whether or not the development has gained immunity from planning control the appellant, in his representations, says that the development was completed by March 2020. However, the Council refers to the fact that the application form relating to the said development, refused planning permission and dismissed at appeal, says that the works commenced on 1 May 2020. In examining the application form, it shows that 'Reeve Brown', the agents for the current appeal, were also the agents for the said planning application. The Council is correct in this regard and further, the application form, completed by the agents, indicates that the works were then completed by 1 June 2024.
9. The onus is on the appellant to provide compelling evidence to support his case. The evidence offered here is hardly precise or unambiguous; in fact it is contradictory. On this basis, the evidence strongly suggests that the unauthorised development had yet to commence by 26 March 2020.
10. Accordingly, in the absence of any convincing information before me to convincingly demonstrate otherwise, the appeal on ground (d) fails.

The appeal on ground (a) – the deemed planning application (DPA)

11. The main issues are:

- 1) the effect of the development on the character and appearance of the surrounding area, with particular regard to the conservation area location; and

- 2) the development's effect on the living conditions of neighbouring residential occupiers.

Reasons

12. Both the above issues were assessed by the previous Inspector and, in the absence of any material change in circumstances since this time, the factors have already been rehearsed yet the appellant appears to ignore this fact save for his response to the Council's appeal statement whereby he says he remains of the view that the development complies with local and national planning policy and planning permission should be granted.

Character and appearance

13. The appeal is located within the Felixstowe South Conservation Area. I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

14. The previous Inspector, on this issue, states:

'In relation to the character of the conservation area, the extension and air conditioning unit fail to demonstrate an understanding of the key features of local character or respond to the local context and form of surrounding buildings by virtue of their inappropriate scale, massing, design, materials and relationship with other buildings and the street scene. The rhythm evident to the rear of the properties on Holland Road created by regular dual pitched rear wings extending into modest external space is disrupted by the appeal proposal.'

15. On this issue the previous Inspector found that the development causes harm to the character of the conservation area, albeit less than substantial harm, for the purposes of the National Planning Policy Framework (the Framework). From my site visit observations I have no reason to disagree with the above findings as the development fails to respect the identified design characteristics of the dwelling and also the conservation area within which it sits.
16. Accordingly, I conclude that the development neither preserves nor enhances the character or appearance of the Felixstowe South Conservation Area, and is also in conflict with policies 11.1 'Design Quality' and 11.5 'Conservation Areas of the East Suffolk Council Suffolk Coastal Local Plan (LP) and the LP Supplementary Planning Guidance 16 (SPG) 'House Alterations and Extensions'.

Living conditions

17. The gardens or yards to the rear of the Holland Road terrace, of which the appeal property forms part, are limited in depth and, due to the extension's height and depth, it is clear that the development adversely impacts on the occupiers of 14 Holland Road due to a resultant loss of outlook and reduced natural light entry.
18. The Council's Environmental Protection team (EPT) has apparently commented on the installation of the air conditioning unit and, due to its positioning, has recommended that a noise assessment should be compiled to illustrate the emissions therefrom, and put forward any necessary attenuation measures.

This report should then be submitted to the EPT for consideration. I have not been provided with any such assessment and, in the absence of evidence to demonstrate otherwise, and because of the near proximity to the neighbouring properties I am of the view that the propensity exists for resultant noise and disturbance when the unit is operative, and this would likely be harmful to the living conditions of neighbouring occupiers.

19. I must therefore conclude that the development is harmful to the living conditions of neighbouring residential occupiers, and it conflicts with LP policy 11.2 'Residential Amenity' and also relevant advice as to neighbourly development set out within paragraph 135 of the National Planning Policy Framework.

Conclusion

20. In the circumstances I have no reason to find differently from the previous Inspector. I am unaware of anything of significance that may have changed since his decision was issued in May 2024. The appellant has not introduced anything of substance that was not before the previous Inspector. Reference is made to domestic residential extensions that have been granted planning permission, as has other previously approved air conditioning units, but these details were also before the previous Inspector. Besides, each case should be determined on its own merits and/or impacts, the particular context involved and also individual circumstances. Accordingly, parallels are not easily drawn.
21. Moreover, though, as the appellant has not attempted to rebut the previous Inspector's comments and no new material has been advanced, I must conclude that the appeal is at best of forlorn hope and at worst, futile. Indeed, as a consequence of the Levelling up and Regeneration Act 2023 a DPA, in such circumstances, would now be prohibited.
22. For the reasons given above I thereby conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the DPA.

Timothy C King

INSPECTOR