



Appeal Decision

Site visit made on 16 October 2017

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 October 2017

Appeal Ref: APP/W1905/C/17/3170374

Bungalow to rear of 24 Cuffley Hill, Goffs Oak, Hertfordshire, EN7 5EU

- 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 Act).
 - The appeal is made by Lycium Properties Limited against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice was issued on 21 February 2017.
 - The breach of planning control alleged in the notice is failure to comply with condition No. 1 of a planning permission Ref 07/15/1173/HF granted on 9 May 2016.
 - The development to which the permission relates is described as:
"Infill existing timber structure with brick construction. Replace existing front elevation patio doors with new windows".
 - The condition in question states:
"The three openings to the rear wall of the property subject of this application shall be permanently closed in masonry and this work of amendment shall be completed, including finishes, within a period of 28 days commencing on the date of this notice".
 - The requirements of the notice are:
 - (i) Close off in masonry to match the existing building the three openings at the rear wall of the property edged blue on the attached plan.
 - The period for compliance with the requirements is 1 day.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Act. Since the prescribed fee has not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decision

1. It is directed that the notice be varied in Section 6 by deleting the words "1 day" and substituting instead the words "2 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal site and background

3. The appeal site is a detached bungalow positioned with its rear wall close to the boundary with the rear garden of a neighbouring property at No. 42A The Drive. Three obscure glazed windows, serving two bathrooms and an internal corridor, have been inserted into the rear wall of the bungalow in breach of condition No. 1 (C1) of planning permission 07/15/1173/HF.

The appeal on ground (f)

4. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may

- be constituted by the matters alleged in the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. When a ground (f) appeal is made it is essential to first understand the *purpose* of the notice. Section 173(4) of the Act provides that the purpose is to:
(a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
 6. There is no doubt in my mind that the Council's reasons for issuing the notice were in order to safeguard the amenity of the occupiers of the neighbouring property at No. 42A. That is clear from Section 4 of the notice.
 7. However, the requirement at Section 5 of the notice requires the complete removal of the three window openings by closing them off in masonry, so as to comply with C1 of planning permission 07/15/1173/HF. Hence the *purpose* of the notice is to remedy the breach of planning control within Section 173(4)(a) of the Act.
 8. Given the above, it is important to note therefore that the ground (f) appeal in this case turns on whether or not the requirement at Section 5 exceeds what is necessary to remedy the breach of planning control.
 9. The appellant argues that a timber fence in situ at the time of my visit to the appeal site prevents an undue loss of privacy to occupiers of No. 42A. However, whether the fence is permitted development or not¹, there is no appeal before me on ground (a) to retain the three window openings. Consequently, since there is no mechanism for granting planning permission, a planning condition (which could have required the retention of the fence in perpetuity) cannot be imposed. The merits of whether the fence would be acceptable in these circumstances would be a matter for determination by the Council in the first instance².
 10. The merit of retaining the windows to provide natural light to the bungalow is also an argument pertinent to an appeal under ground (a); that planning permission should be granted for them. It is not an argument relevant to this appeal under ground (f).
 11. To conclude; since the notice imposes a requirement which goes no further than remedying the breach of planning control, by closing off the openings in masonry so that the building is in accordance with the planning permission, it clearly cannot be an excessive requirement.
 12. The appeal on ground (f) therefore fails.

Other matters

13. No appeal on ground (g) has been made.
14. However, appellants are entitled to wait until the outcome of an appeal before committing themselves to making arrangements and expenditure (for example deposits) for any required works necessary to comply with the notice. The period of time for compliance with the notice should therefore be reasonably commensurate with all that is required in order to achieve compliance following the date on which the notice comes into effect.

¹ The parties disagree on the appropriate ground level from which to measure the fence height.

² It should be noted that the merits of a heightened fence were considered in appeal APP/W11905/W/16 3151000

15. For these reasons I consider that the one day compliance period in the notice is unreasonably short. I have therefore varied the compliance period in the notice to allow 2 months which I consider is more reasonable in all the circumstances.

Thomas Shields

INSPECTOR