



Appeal Decision

by **Andrew J Davenport**

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2011

Appeal ref: APP/W4223/C/10/2141301 & APP/W4223/C/10/2141302
Land at 35 Werneth Crescent, Oldham, OL8 4LT

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeals are brought by Farooq Butt and Mrs Shahina Khalid against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The Council's reference is Enf/07/517.
- The notice was issued on 22 October 2010.
- The breach of planning control as alleged in the notice is "The building, without planning permission, of a single storey rear extension to the dwelling house on the land."
- The requirements of the notice are to: "Demolish all unauthorised building work and remove demolition materials from the land."
- The period for compliance with the requirements is "Within 3 months of the date on which the notice takes effect."
- The appeals are made on ground (g) as set out in section 174(2) of the amended 1990 Act.

Summary of decision: The appeals are dismissed and the enforcement notice is upheld without variation.

Procedural matters

1. The Inspectorate's letter of 14 December 2010 confirmed that, because the correct fee was not paid within the specified period, the deemed application for planning permission had lapsed. The planning merits of the development cannot therefore be considered. I shall accordingly deal only with the appeals on ground (g).
2. I have considered the ground on which the appeals were made and the appellant's letter of 25 November 2010, together with the Council's statement. As these representations have been made available to the parties, I do not intend to summarise them in detail. They have been carefully considered.

Background

3. 35 Werneth Crescent is a semi-detached house sited at the head of a cul-de-sac of similar properties of suburban style. A retrospective planning application (Ref:HH/054530/08) for the unauthorised development was refused by the Council on 30 May 2008. An enforcement notice was issued on 16 January 2009. A further retrospective application (Ref: 055913/08) was refused on 19 January 2009. An appeal (APP/W4223/C/09/2098182)

against the enforcement notice was received on 18 February 2009 under grounds (a), (f) and (g) and was heard jointly with planning appeal (APP/W4223/A/09/2098294). The Inspector, in his decision of 18 August 2009, upheld the notice but also varied it to extend the period of compliance from 3 to 6 months. The requirements of the notice were not complied with within this time. The Council reminded the appellant of this on 10 May 2010 before eventually taking enforcement action on 22 October 2010 after initially failing to issue the notice on all those with an interest in the land.

4. The ground (g) appeal was made on the basis that the appellant was going through a financial crisis and considered that a period of 6 months would be needed to allow time to demolish the extension by careful dismantling, removal and recycling of materials where possible and to allow time for potential inclement weather conditions.
5. The Council are of the view that the extension, by reason of its siting, size and design results in an incongruous and jarring form of development which is out of keeping with the scale, massing and general built form of the existing house and has an adverse visual impact on the street scene and general character in of the surrounding area. They submit that the appellant has been aware of the unauthorised works for approximately 24 months. Although he has sought to regularise the situation through 2 planning applications he has not sought to substantially alter the scale, massing and design so as to make it acceptable. In the circumstances they consider that 3 months is sufficient time for compliance with the notice.
6. I have carefully considered all the points made during the appeal. I appreciate the appellants' wish for additional time to comply with the notice due to financial difficulties and to the need to arrange the dismantling of the extension and disposal of materials. However, I am also conscious that a previous enforcement notice appeal and section 78 appeal for retrospective planning permission for essentially the same development were both dismissed on 18 August 2009. In the enforcement appeal decision the Inspector extended the period for compliance from 3 to 6 months, which expired in February 2010. Therefore, the appellant has had a further 9 months to the submission of this appeal, to comply with the notice. The breach of planning control has now existed since at least January 2008. The stated harm to the amenity of the local area cannot persist. Although I do not wish to be in any way dismissive of the appellants' personal circumstances, this cannot carry much weight in coming to decisions in planning matters and has to be balanced against the Council's concern to remedy what the notice identifies as having an adverse effect on the character and appearance of the surrounding area.
7. In view of the above, I consider it appropriate to return development control to the local planning authority as soon as possible. I therefore take the view that the 3 months allowed for compliance would be sufficient time to meet the requirements of the notice and I can see no justification for extending the compliance period further.
8. Bearing all these points in mind, I do not consider that an extension of the compliance period would be justified in this case. The ground (g) appeal fails accordingly.

Formal decision

9. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the enforcement notice.

Andrew J Davenport