



Appeal Decisions

Site visit made on 8 May 2018

by **Mr A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 29 May 2018

Appeal A ref: APP/C/17/3191826

Appeal B ref: APP/C/17/3191827

2 Adams Row, Southwell, Nottinghamshire NG25 0FF

- 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 Act).
- The appeals are made by Mr Adrian Boud and Mrs Angela Boud against an enforcement notice issued by Newark and Sherwood District Council as the local planning authority (LPA).
- The enforcement notice was issued on 27 November 2017.
- The breach of planning control alleged in the notice is failure to comply with condition No 4) of a planning permission ref 16/00024/FUL granted on 2 March 2016.
- The development to which the permission relates is erection of a small rear lean-to kitchen extension and front extension over garage. The condition in question is no.4, which states that: *Notwithstanding the plans hereby approved, all windows at first floor level in the western elevation shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7 m above the internal floor level of the room in which it is installed. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.* The reason given for the condition reads: *To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties.* The notice alleges that the condition has not been complied with in that all of the windows at first floor level in the western elevation are not obscure glazed and non-opening up to a minimum height of 1.7 metres.
- The requirements of the notice are to:
 - 1) Ensure that all windows within the development approved by planning consent reference 16/00024/FUL, as issued by the LPA on 2nd March 2017, at first floor level in the western elevation are obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent; and
 - 2) Ensure that all windows within the development approved by planning consent reference 16/00024/FUL, as issued by the Local Planning Authority on 2nd March 2017, at first floor level in the western elevation are non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed.
- The period for compliance with the requirements is 56 days.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Matter concerning the notice

1. The allegation clearly tells the recipient what has gone wrong and the requirements specify what needs to be done to remedy the alleged breach. It is apparent to me that the notice alleges a breach of condition imposed on a previous planning permission.

However the notice at section 1 refers to section 171A(1) subs (a) of the Act but this is technically incorrect.

2. Subsection (b) to s 171A(1) indicates that failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. I consider that the notice requires correcting for clarity's sake. This is a minor error. I am satisfied that the correction causes no injustice to the LPA or appellants. I shall correct the notice as follows.

Decisions – Appeals A and B

3. It is directed that the enforcement notice be corrected by the deletion of the following: '*paragraph (a) of section 171A(1)*' in section 1, beginning with the words '*this notice*', and the substitution therefor by the following: '*paragraph (b) of section 171A(1)*'. Subject to the correction, the appeals are allowed on ground (c) and the enforcement notice is quashed.

Ground (b)

4. The challenge is that the matters alleged on the corrected notice have not in fact occurred. The date of the notice's issue is relevant. In legal grounds of appeal, the standard is on the balance of probabilities.
5. Planning permission was granted on 2 March 2016 for the erection of a small rear lean-to kitchen extension and front extension over the garage subject to four conditions (the 2016 permission). In January 2018 the LPA approved a non-material amendment¹.
6. The appellants maintain that the 2016 permission has been implemented in accordance with the plans specified at condition 2), which were changed by the non-material amendment. The LPA consider that the development is in breach of condition 4), which states the following:

Notwithstanding the plans hereby approved, all windows at first floor level in the western elevation shall be obscured glazed to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

The reason for imposing the condition reads:

To safeguard against overlooking and loss of privacy in the interests of amenity of occupiers of neighbouring properties.

7. The facts are that part of the window fitted to the study room is clear glazed. It therefore appeared to the LPA that a breach of condition 4) had occurred. At the time of my site visit the window to the study room was not fully obscure glazed and non-opening. That was the circumstance during the period leading up to the issuing of the notice. At the date when the notice was issued, the matters alleged in the corrected notice had in fact occurred. Ground (b) must fail.

¹ LPA refs: 16/00024/FUL and 17/02318/NMA.

Ground (c)

8. The appellants should show that the window in the study room does not amount to non-compliance with condition 4). Their case is that the condition has been satisfied because all of the windows up to a height of 1.7 m are obscure glazed and non-opening. They argue that any window above 1.7 m could be both opening and clear-glazed. On the other hand, the LPA's submission is that the stipulation requires all of the windows to be obscured glazed and non-opening.
9. The windows installed at first floor level to the western elevation are emphatically controlled by condition 4), which is reasonable and remains effective and in force. The intended purpose of the stipulation is to safeguard the privacy of the neighbours. Read straightforwardly and within the context of the 2016 permission, the natural and ordinary meaning of the words clearly suggest that it requires obscure glazed and non-opening windows up to a minimum height of 1.7 m when measured from the internal floor level. That is the basic criteria for compliance with its terms. I do not consider that the condition is uncertain.
10. My assessment of the condition's meaning is consistent with the reason given for imposing it. The LPA wanted to avoid potential loss of privacy, but it specified obscure glazing and non-opening windows up to a minimum height of 1.7 m when measured from internal floor of the room in which the window is installed. Thus, the condition affects those windows that are less than the specified height. In my opinion, to argue otherwise is unrealistic and inconsistent with the terms of the 2016 permission. Furthermore, I disagree with the assertion that all of the windows are controlled by implication, due to the use of clear terminology in drafting the condition. If the LPA wanted to control all of the new windows in the western elevation at first floor level, the height restriction should not have been imposed.
11. I have already said that the clear glazing to the study room window is above 1.7 m in height when measured from the internal floor level. Given the precise meaning of condition 4), I find that the window does not breach its terms. On the balance of probabilities, I conclude that the matters alleged in the corrected notice do not constitute a breach of planning controls.

Other matters and overall conclusions

12. Arguments about the need for the clear glazed window or invasion of privacy go to the planning merits of the development. None of these are pertinent to the consideration of these legal grounds of appeal. In my assessment of these Appeals, I have disregarded all of the planning merits arguments.
13. For the reasons given above and having regard to all other matters, I reject the LPA's submissions and ground (c) succeeds. Accordingly the enforcement notice is quashed subject to a minor correction. In these circumstances ground (f) does not need to be considered.

A U Ghafoor

Inspector