
Appeal Decision

Site visit made on 11 October 2016

by Jean Russell MA MRTPI

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

Decision date: 21 November 2016

Appeal Ref: APP/V2004/C/16/3143416
322 Marsdale, Kingston upon Hull, HU7 4AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Penelope Wilson against an enforcement notice issued by Kingston-upon-Hull City Council.
- The enforcement notice, numbered 15/00306/BUILD, was issued on 18 December 2015.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached timber structure in the garden at the southern end of the premises.
- The requirement of the notice is to remove the structure.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the 1990 Act as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

1. The appeal was made on grounds (a) and (f), the former being that planning permission ought to be granted for the matters alleged in the notice. The appellant's submissions on ground (a), however, properly related to ground (c). She also failed to pay the prescribed fee within the specified period for ground (a) to be considered. The appeal falls to be considered on grounds (c) and (f).

The Appeal on Ground (c)

2. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal raising questions as to whether planning permission is required for the alleged structure and, if so, whether permission has already been granted.
3. Section 57(1) of the 1990 Act as amended specifies that planning permission is required for 'development' – and that is defined under s55(1) as including the carrying out of building operations. Some operations are excluded from the meaning of development under s55(2), but garden buildings do not benefit from those provisions. Planning permission is required for the alleged structure.
4. Some forms of development are granted planning permission by the *Town and Country Planning (General Permitted Development) Order 2015* (GPDO). Under Article 3, Schedule 2, Part 1, Class E of the GPDO, the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of a dwellinghouse is 'permitted development'. Class E permits the erection of garden summerhouses and sheds – but subject to conditions and limitations. The Council objects that the appeal building is in breach of condition

E.1(c) because it is 'situated on land forward of a wall forming the principal elevation of the original dwellinghouse'.

5. The term 'principal elevation' is defined in *Permitted Development Rights for Householders: Technical Guidance* (April 2016), which was published by the Government to assist in the interpretation of Part 1. It states that 'in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.'
6. The appellant lives in a mid-terraced two storey house within in an estate that is laid out with networks of roads and footpaths. The appeal and adjacent properties face a road to the north from behind yards and garages; they also face a footpath to the south from behind gardens. Both elevations of the house face a highway.
7. I understand why the appellant considers the road to be the 'main highway': it is her family's main access route and they usually enter the house through the road-facing door. However, I saw that the house and adjoining properties have doors to their south-facing gardens, and then gates to the footpath, and there are letter boxes next to those doors or gates. The footpath appears to be the main highway for the purpose of delivering mail to the terrace – and I saw that it is also well-used by local residents. From the evidence before me, either the road or the footpath could be described as the 'main highway' – and so the principal elevation of the house must be that which contains the main architectural features.
8. The doorway on the northern or roadside elevation of the house is unassuming. By contrast, the doorway on the southern or footpath side is enhanced by a side panel – containing the letter box – and a canopy porch. On the northern side of the building, the windows include one at first floor level which is relatively small and obscurely glazed. On the southern side, there are patio doors at ground floor level, while both first floor windows are large and clear-glazed. I find that the southern elevation contains the main architectural features of the building.
9. I conclude that, although the appellant considers the northern side of the house to be the 'front', the southern elevation is the principal elevation. Planning permission is required for the alleged structure, but it is not permitted development under Part 1, Class E of the GPDO, because it is situated forward of the principal elevation in breach of condition E.1(c). The appellant would need to apply to the Council for planning permission, but no such application has been made or granted. There has been a breach of planning control and the appeal on ground (c) must fail.

The Appeal on Ground (f)

10. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach. In considering whether the steps are excessive, it is necessary to start by looking at the purpose of the notice.
11. The notice alleges that a structure has been erected and it requires that the structure is removed. The notice does not allow for retention of the structure in any way, shape or form and so it is clear that the purpose of the notice is to remedy the breach. For this reason and since the ground (a) appeal has lapsed, I cannot consider the planning merits of the structure or whether the notice should be varied so as to only remedy any harm to amenity.

12. Where there is an appeal on ground (f) but not (a), the appellant can propose less onerous requirements to those set out in the notice, but these should still remedy the breach of planning control. The appellant describes the notice as 'heavy-handed' but she only seeks to retain the structure as it is – and that would not remedy the breach. She has not suggested appropriate lesser steps.
13. The Council suggests that the structure could be reduced to its eaves height but this would not remedy the breach; the building would still be situated forward of the principal elevation. Moreover, the notice would not be sufficiently precise if it required that the building be lowered with no other design stipulation; s173(3) of the Act provides that a notice must specify the steps to be taken. Neither the Council nor the appellant has fully described potential modification works.
14. I find that it is not excessive for the notice to require that the structure be removed, and no lesser steps have been put forward which could remedy the breach of planning control. The appeal on ground (f) fails.

Other Matters

15. I saw that there are other garden buildings nearby, but I am not aware as to whether any are lawful, and I note that a planning application was made for that at 306 Marsdale. The existence of the other garden buildings may be relevant to the merits of the appeal structure, but not to grounds (c) or (f).
16. I cannot comment on the appellant's complaints that the Council failed to give her clear or consistent advice. However, it seems from the representations that the Council would consider allowing a structure in the garden, if the appellant is prepared to discuss the height and a planning application is made.
17. Under s176(1)(b) of the 1990 Act, I have the power to vary the terms of the notice provided that doing so would not cause injustice to the appellant or the Council. I can vary the period for compliance with the notice, even though there is no appeal on ground (g) relating to that matter. Given the submissions on ground (f), it would be reasonable to give the appellant time to enter into discussions with the Council, or submit a planning application for the appeal structure in its existing or a modified form. So that she can retain the structure during the process. I shall vary the notice so that the period for compliance is three months.

Decision

18. The enforcement notice is varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Jean Russell

INSPECTOR