
Appeal Decision

Site visit made on 29 December 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 05 January 2017

Appeal Ref: APP/F5540/C/16/3152476

Land to the west of Felthambrook Way, Feltham

- 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 Kiyas Tahsin Unal against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice, reference GEN/2015/00004, was issued on 11 May 2016.
- The breach of planning control as alleged in the notice is without permission the erection of a single storey 'L' shaped structure.
- The requirements of the notice are:
 - i) Remove the structure on the north eastern boundary of the site adjacent to Felthambrook Way.
 - ii) Remove all resultant debris from the property.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural matters

1. In addition to the appeal on ground (b) the Appellant maintains that the erection of the structure does not constitute a breach of planning control because it is permitted development. This is a ground (c) appeal and I will take that ground of appeal into account. The question of 'prior approval' was considered in the Council's Enforcement Notice report and therefore no prejudice will be caused to either Party by this course of action.
2. The Appellant also raises a number of matters in his grounds of appeal and letter dated 9 June 2016 to the Inspectorate which include evidence of agricultural use¹ and his efforts to clear and maintain the land which go to the planning merits of the development. But the Appellant did not make a ground (a) appeal and these matters cannot be taken into account in this appeal.

The appeal on ground (b)

3. The Appellant made an appeal on ground (b), that is, that the breach of planning control alleged in the notice has not occurred as a matter of fact. In his grounds of appeal and his letter he does not dispute that the structure has been erected but he says that the structure is made of wood and is a temporary structure.

¹ I saw no evidence of an agricultural use at the time of my visit and the plot of land and structure appeared to me to be neglected and unused

4. The Appellant states that the structure is constructed with wooden posts some 4m high to withstand weather conditions and plywood. A building includes any structure or erection² and the case of *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd*³ identified the three primary factors relevant to the question of what was a building, namely, size, permanence and physical attachment. The Appellant describes the structure as some 4m high and 32sq m in area with a 80sq m extension some 2.4m high⁴; the Council says it is about 15.5m wide and about 25m deep⁵. From the dimensions provided by the Parties, and from what I saw, it is apparent that structure is of considerable size. The Appellant refers to the structure as 'an agricultural outbuilding' used for storing hay and it therefore has a purpose that requires an element of permanence. The Appellant also advises that, although there are no foundations, there are holes some 50cm deep which were opened by a large screw to fix the 10cm by 15cm by 240cm fence posts⁶. The structure is therefore physically attached to the ground.
5. The structure satisfies the three factors that determine it to be a building and taking that into account and from what I saw on my visit I am satisfied that the structure that is the subject of this appeal is not a temporary one. I find that the breach of planning control as alleged on the notice has occurred as a matter of fact and therefore the appeal on ground (b) fails.

The appeal on ground (c)

6. Class A of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO) permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of, among other things, works for the erection of a building which is reasonably necessary for the purposes of agriculture within that unit. Development permitted by Class A is subject to a number of conditions, one of which is that before beginning development consisting of the erection of a building the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.
7. The structure that has been erected may comply with the permitted tolerances and limitations but there is nothing within this Part of the GPDO that excludes a wooden structure as suggested by the Appellant.
8. No prior approval was sought by the Appellant for this development. The need for prior approval is worded as a pre-commencement condition on the permitted development right. Therefore, if the prior approval procedure has not been complied with the erection of the 'L' shaped structure cannot fall within the permitted development right and it cannot be lawful. In those circumstances, which is the case in this appeal, the appeal must fail.
9. The structure does not benefit from permitted development rights and no planning permission has been applied for or granted in respect of it. The appeal on ground (c) fails.

² S.336(1) of the 1990 Act

³ [1949] 1QB 385

⁴ The Appellant's grounds of appeal

⁵ The Enforcement Notice Report

⁶ The Appellant's letter dated 9 June 2016 part 2

Conclusions

10. For the reasons given above I consider that the appeal should not succeed.

Decision

11. The appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector