
Appeal Decision

Site visit made on 27 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/N4720/C/16/3162907

Alvis, Main Street, East Ardsley, Wakefield, WF3 2AT

- 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 Mr David Grayshon against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 28 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land to a mixed use for the stationing of two portacabins and residential use.
 - The requirements of the notice are: Cease the use of the land for the unauthorised storage of two portacabins and remove the two portacabins from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

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

The appeal on ground (c)

2. It is important to note that the determination of legal grounds of appeal, including ground (c), are based on the development as it existed on the date the enforcement notice was issued and I have therefore determined the appeal on that basis. The onus of proof in legal grounds is upon the appellant, and the test of the evidence is on the balance of probability.
3. The ground (c) appeal is that the matters referred to in the alleged breach of planning control in the notice do not constitute a breach of planning control.
4. The two portacabins are sited within the red line of the enforcement notice on the appellant's land. The appellant argues that the portacabins are used for storage and as a rest room for builders; citing work in progress in respect of a previous planning permission¹ to extend his house. He also refers to a submitted planning application for two dwellings on the land which currently are still undetermined.
5. The appellant makes no argument that the siting of the portacabins has not resulted in the material change of use as alleged. Having regard to all of the facts before me, and my own observations during my visit to the appeal site, I make no contrary finding in this regard.

¹ Council ref. 13/01216/FU

6. In effect the appellant is arguing that the portacabins benefit from the planning permission granted for *temporary buildings and structures* by virtue of Article 3 and Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order"). It grants planning permission ("permitted development") as follows:
 - A. *The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*
7. However, the Order states at A.1(b) that development is not permitted if –
planning permission is required for those operations but is not granted or deemed to be granted.
8. The appellant presents no evidence that planning permission 13/01216/FU has commenced, and the Council's evidence in their statement is that it has not been implemented. Additionally, I saw no evidence during my visit to the appeal site that it had commenced. That being the case it will have expired on 16 May 2016, being prior to the issue date of the enforcement notice. Also, no planning permissions were extant for the proposed two additional dwellings at the time the notice was issued, that still being the case at the time of my visit to the appeal site.
9. Since no planning permission existed for the extension or the two proposed dwellings, as described above, the portacabins cannot be permitted development by virtue of A.1(b).
10. To conclude, the mixed use of the land for residential purposes and for siting of the two portacabins is a material change of use and amounts to 'development' as defined by section 55 of the Act, for which planning permission is required. Since no planning permission exists for the development it constitutes a breach of planning control.
11. The appeal on ground (c) therefore fails.

Thomas Shields

INSPECTOR