
Appeal Decision

Site visit made on 28 March 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 26 April 2017

Appeal Ref: APP/X1545/C/16/3158867

2 Westfield, Bungalow, Mundon Road, Mundon, Maldon, Essex CM9 6PQ

- 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 Danny Rigden against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 17 August 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of an outbuilding, its approximate location marked with an "X" on the attached plan.
 - The requirements of the notice are:
 - a. Demolish the unauthorised outbuilding.
 - b. Remove any associated debris, detritus or other resulting material from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by:
 - The insertion of the word 'Either' before 'a' in paragraph 5;
 - The insertion of the word 'and the removal of' after 'outbuilding' in paragraph 5a;
 - The deletion of 'b. Remove' at paragraph 5b; and
 - The insertion of
 - 'Or
 - b. the alteration of the outbuilding to comply with the limitations and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended' after paragraph the varied paragraph 5a.

Subject to these variations the enforcement notice is upheld.

Preliminary Matters

2. The appellant, or his representative, failed to attend the site visit at the appointed time and date. I therefore carried out an unaccompanied site visit, viewing the appeal site and building, from the footpath and road verge.
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3. The appellant refers to incorrect advice being received from the Council. However, whether or not this was the case is not a matter for me to adjudicate on.

Appeal on ground (f)

4. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. The appellant considers that the notice is excessive in requiring the building to be demolished and materials removed from the land. He considers that the building could be altered to be a further 1m from the boundary and thus by implication within the limitations and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
5. The Council state that the outbuilding is located within two metres from the boundary of the site and its height exceeds the limitations and conditions of Class E of Part 1 of Schedule 2 of the GPDO. The Council considers that extensive works would need to be carried out to either reduce the height of the building or locate it further away from the boundary to comply with the limitations and conditions of the GPDO. In its view this would not be viable for the outbuilding to be reduced to a size within the permitted development tolerances.
6. It is clear from the Council's submissions that the purpose of the notice is to remedy the breach of planning control. The Council made a judgement on the evidence available that works to bring the outbuilding in line with the limitations and conditions of Class E would be extensive, which in light of the lack of response by the appellant at that time was reasonable. However, in the appellant's final comments he clearly states the building could be moved 1m from the boundary. While I acknowledge that a requirement in the alternative to comply with the conditions and limitations of Class E of the GPDO would not achieve the purpose of the notice, it is a reasonable prospect that an outbuilding meeting those limitations and conditions would be erected by the appellant.
7. Taking into account that enforcement action is remedial and not punitive, I will therefore vary the requirements to allow for either the demolition of the outbuilding and the removal of resultant debris from the site or the alteration of the outbuilding to comply with the limitations and conditions of Class E. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (f) succeeds to that extent.

Hilda Higenbottam

Inspector