
Appeal Decision

Hearing held and site visit made on 15 August 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 22 August 2017

Appeal Ref: APP/G3110/X/16/3166148

57 Headley Way, Headington, Oxford, OX3 7SR

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawfulness of Proposed Development ("CLPD").
 - The appeal is made by Mr. M. Armitage ("the Appellant") against the decision of Oxford City Council ("the Council").
 - The application Ref 16/02560/CPU, dated 26 September 2016, was refused by notice dated 23 November 2016.
 - The application was made under Section 192(1)(b) of the 1990 Act.
 - The development for which a CLPD is sought is the proposed erection of an outbuilding for use as garage/store.
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Application for costs

1. At the Hearing an application for costs was made by the Appellant against the Council. This application will be the subject of a separate Decision.

Procedural Matters

2. The onus of proving that the proposed outbuilding ("the Outbuilding") would be lawful rests with the Appellant. He has to prove this on the balance of probabilities.

Background Matters

3. On 7 May 2015 the Council granted a Certificate of Lawful Proposed Use or Development¹ for a proposed outbuilding at No. 57 containing two car parking spaces and a workshop ("the Certified Outbuilding"). The Certified Outbuilding was flat roofed, within 2m of the boundary of the dwelling-house at No. 57 and did not exceed 2.5m in height.
4. The application for the Certified Outbuilding was accompanied by a statement from the Appellant's then agent. Within that statement it stated that, "The site has a gentle slope towards the rear boundary from the pavement edge of approximately 600mm, although this is uniform across the site". As discussed at the Hearing it seems likely that the word "not" had been omitted before the word "uniform" in that statement. What is clear to me is that the site on which the Outbuilding was to be built was formerly sloping land. Unfortunately there was no survey carried out to establish the ground levels within the site where the Outbuilding has been erected.

¹ Reference 15/00787/CPU

5. In late 2015/early 2016 building works on the Outbuilding commenced. The Outbuilding has not been fully completed as yet but its walls and roof have been substantially completed.
6. Prior to the erection of the Outbuilding the land on which it was built together with adjoining land was levelled. According to the Appellant the land at the rear of the Outbuilding was about 900mm higher than the level of the adjoining pavement in Bowness Avenue.
7. The land between the rear of the Outbuilding and the fence along the common boundary of Nos. 57 and 59 was, according to the Appellant, the highest land immediately adjacent to the Outbuilding. The Appellant claims that he has reinstated the level of the land immediately adjacent to the rear of the Outbuilding to its previous level.
8. The front elevation of the Outbuilding exceeds 3m in height above the existing and proposed ground levels. The ground levels along the sides of the Outbuilding have not been reinstated as yet.
9. The Council's formal decision notice in respect of the CLPD states that:
 - a) The Outbuilding does not fall within the permitted development rights conferred by Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").
 - b) The Outbuilding does not comply with the advice in "Permitted development rights for householders – Technical Guidance" ("the Guidance") because it is within 2m of the boundary of the curtilage of the house and the height limit for the whole of the development is restricted to 2.5m if it is to be permitted development and the height of the Outbuilding is 3.5m.

Reasons

10. Class E of the Order provides permitted development rights within the curtilage of a house for, amongst other things, any building required for a purpose incidental to the enjoyment of the dwelling-house as such. Development is not permitted if, amongst other things, the height of the building would exceed 2.5m in the case of a building within 2m of the boundary of the curtilage of the dwelling-house. The Guidance states that:
 - a) The height of a building should be measured from highest ground level immediately adjacent to the building to its highest point.
 - b) If any part of the building is within 2m of the boundary of the curtilage of the house, the height limit for the whole of the development is restricted to 2.5m if it is to be permitted development.
11. The Order states in Article 2(2) that any reference in the Order to the height of a building is to be construed as a reference to its height when measured from ground level. Ground level means the level of the surface of the ground immediately adjacent to the building in question or where the level of the surface of the ground on which it is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.
12. At the site visit it was agreed between the Council Officer and the Appellant's agent that the level of the damp proof course within the rear elevation of the Outbuilding was the likely level of the highest part of the land immediately

adjacent to the Outbuilding. The highest part of the Outbuilding from the land immediately adjacent to the Outbuilding was 2.52m. This was agreed between the Appellant's agent and the Council Officer and I saw that this was the correct height.

13. I therefore conclude that the Outbuilding would not be permitted development because its height exceeds the limitation sent out in Class E.1(e)(ii) of the Order.

Other Matters

14. The Council are also concerned that the Outbuilding cannot be permitted development because:

- a) The operation of Condition 5 of the planning permission granted on appeal². This Condition was repeated when Condition 3 of the same permission was varied on 22 January 2015³.
- b) Of the engineering operation that was carried out so as to provide a level base on which to build the Outbuilding.

15. I do not intend to come to any formal conclusion regarding those matters because, notwithstanding my views on those matters, the Outbuilding cannot be permitted development for the reasons explained above regarding the operation of Class E of the Order.

16. I also understand that a former Enforcement Officer with the Council advised that planning permission for the Outbuilding was not required. That does not alter my decision in relation to the application for a CLPD.

Overall Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a CLPD in respect of the proposed erection of the Outbuilding for use as garage/store at No. 57 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

Decision

18. The appeal is dismissed.

Tim Belcher

Inspector

² Council Reference 09/02435/FUL

³ Council Reference 14/03239/VAR

APPEARANCES

FOR OXFORD CITY COUNCIL

Robert Fowler BSc(Hons), MA, MRTPI

Development Management Team
Leader

FOR THE APPELLANT

Henry Venners BSc(Hons), MA, MRTPI

Partner at JPPC, Chartered Town
Planners

DOCUMENTS

- Document 1 – Appeal Decisions dated 10 May 2010 – 57 Headley Way.
- Document 2 – Variation of Condition 3 of planning permission
09/02435/FUL dated 22 January 2015 (Reference
14/03239/VAR).
- Document 3 – Photo album – Paul Townsend – 15 March 2016.