
Appeal Decision

Site visit made on 21 August 2018

by Thomas Shields MA DipURP MRTPI

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

Decision date: 26 September 2018

Appeal Refs: APP/V4630/C/17/3180846 and 3188225
100 Whitehorse Road, Walsall, WS8 7PG

- 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 Act).
 - The appeals are made by Mrs Sally Hayes (3180846) and Mr Patrick Hayes (3188225) against an enforcement notice issued by Walsall Metropolitan Borough Council.
 - The enforcement notice was issued on 29 June 2017.
 - The breach of planning control as alleged in the notice is, without the required planning permission, the siting of a high security bike shed measuring approximately 1832 mm wide, 924 mm deep and 1444 mm high, on the front driveway of the house immediately adjacent to the footway, the location of which is shown marked X on the plan.
 - The requirements of the notice are: Remove the bike shed and associated fixtures and fittings.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Act.
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This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 28 August 2018

Decision

1. It is directed that the enforcement notice be varied in Section 5(a) by deleting all of the words therein and substituting instead the following words:

"Remove the bicycle storage shed from the area of the land shown edged in red which is forward of the house and garage on the plan attached".
2. Subject to the variation the appeals are dismissed and the enforcement notice is upheld.

Appeals on ground (c)

3. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control, which is defined at section 171A.(1)(a) of the Act as including the carrying out of "development" without the required planning permission.
4. The onus of proof for this ground of appeal falls to the appellants; they must demonstrate that there has not been a breach of planning control. The relevant test of the evidence is on the balance of probabilities.

5. 'Development' is defined in Section 55 of the Act and includes the carrying out of building operations, and the term 'building' in section 336 of the Act has a wide definition which includes *any structure or erection*.
6. The appellants' case is that the bicycle storage shed ("the shed") does not amount to a building operation and so does not constitute development as defined by the Act. That being the case, it is argued, if it is not development it cannot be a breach of planning control.
7. The shed is constructed in cream colour coated metal, approximately 1.4 metres in height, 1.8 metres width and 0.9 metres depth. At the time of my visit to the appeal site it was located in the corner of the front forecourt area adjacent the railings which form the boundaries with the highway and the neighbouring property No. 102. It stores the appellants' bicycles. It appeared to be of a size and weight that would allow lifting and moving by two or more people.
8. The shed itself is not inherently large when considered in isolation. However, in the context of the modestly sized frontage of No. 100 and other properties in this part of the relatively open street scene, I saw that it sits prominently at the highest point of the sloping forecourt and is highly visible in its location. As a structure it reads in a visual context as a permanent feature, and I note that it was in the same position as appears in photographs taken over time by the Council on particular dates. There is no evidence before me that it has been moved around in the front f area at any time from the date it was first sited. Moreover, even if it were to be moved around from time to time, I noted that its appearance would still have the same presence and effect in planning terms wherever else it might be positioned. All of these factors emphasise the significance of its presence and its characteristic of permanence.
9. For the above reasons I conclude that the shed is a building for the purposes of the Act and its siting on the land constitutes development for which planning permission is required. This conclusion is supported by a long-established Court judgment¹ referred to by the Council in their statement. While I note the reference to the appellants' briefing note², it is the author's own opinion and does not outweigh the judgment of the Court relevant to the particular circumstances of this appeal.
10. The appeals on ground (c) therefore fail.

Appeal on ground (f)

11. This ground of appeal is a claim that the requirements in Section 5 of the enforcement notice exceed what is necessary.
12. When a ground (f) appeal is made it is essential to first understand the purpose of the enforcement notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
13. Since the requirements in Section 5 of the notice require the removal of the shed the purpose of the notice clearly falls within section 173(4)(a) - to remedy the breach of planning control that has occurred.

¹ *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

² Ealing Cycling Campaign, Peter Mynors

14. The land affected by the notice is the whole of the area edged in red on the plan attached to the notice (the whole of the property) and the breach of planning control is the siting of the shed on the land affected. However, the Council in their statement recognise that there is scope for the shed to be treated as “permitted development”³ if it were to be relocated to the rear of the property, and hence suggest that I vary the wording of Section 5 of the notice accordingly.
15. Since varying the notice as suggested would allow the shed to be retained on the property (other than on the frontage) the notice requirements would be less onerous for the appellants than as originally drafted, but would still serve the purpose of the notice in remedying the breach. I have therefore varied the notice accordingly using powers available to me under Section 176(1) of the Act so as to require the removal of the shed from the frontage of the property.
16. I note the appellants’ arguments that the shed does not result in the harm to the character and appearance of the area alleged by the Council and that it could be re-positioned to a different part of the frontage.
17. However, as set out in my reasons under the ground (c) appeal, the shed would be development requiring planning permission. That would be the case wherever else on the frontage it might be positioned. Thus the appellants’ arguments referring to neighbours’ support, the effect on amenity and character and appearance of the area, and that fences could be erected, are all considerations that relate to whether planning permission ought to be granted for the shed to be retained on the frontage. Such matters would be relevant had an appeal been made on ground (a) but one has not been made. I am unable to take them into account in this appeal made on ground (f) which is strictly limited to the question of whether the requirements of the notice exceed what is necessary in order to remedy the breach of planning control.
18. Given that the requirements go no further than requiring the appellants to simply undo what has been done, by removing the shed from the frontage of the property, the requirements self-evidently do not go any further than what is necessary to remedy the breach. Indeed, allowing the shed to remain anywhere on the frontage would not fully remedy the breach and therefore the requirements cannot be excessive.
19. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

³ Development which benefits from planning permission granted by the Town and Country Planning (General Permitted Development) Order 2015