
Appeal Decisions

Site visit made on 2 July 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal A Ref: APP/Q4625/C/18/3215092

Appeal B Ref: APP/Q4625/C/18/3215093

Appeal C Ref: APP/Q4625/C/18/3215094

18 Kingswood Close, Shirley, Solihull B90 3ET

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Miss Stephanie Rolfe (Appeal A), Mr Stuart MacDonald (Appeal B) and Mrs Sandra MacDonald (Appeal C) against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The enforcement notice was issued on 27 September 2018.
 - The breach of planning control as alleged in the notice is the unauthorised development by means of the construction of a detached timber-framed building in the approximate position as shown hatched blue on the Plan.
 - The requirements of the notice are:
 1. Dismantle, demolish, and take down the timber-framed structure in its entirety.
 2. Remove from the Land all materials created by the taking of step (1) above.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(c) and (a). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeals B and C are proceeding on the grounds set out in section 174(2)(c).
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Formal Decisions

Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

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

Appeal C

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

Appeals A, B and C on ground (c)

4. An appeal on ground (c) is made on the basis that the matters in the notice alleged to constitute a breach of planning control, do not constitute a breach of planning control.
5. In assessing whether that test is met, it is necessary to first determine whether what is alleged in the enforcement notice constitutes development as defined in

section 55 of the 1990 Act. Section 55(1) of the 1990 Act defines two limbs of development – operational development and the making of a material change of use. Operational development means the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 55(1)(a) defines building operations as, amongst other things, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.

6. The appellants' position is largely predicated on the basis that the timber-framed structure is a caravan and that, as a consequence, it does not constitute operational development as alleged in the notice. Case law has established that the stationing of a caravan on land constitutes a use of land, rather than operational development. The second limb of the appellants' argument is that a material change of use has not occurred because the structure is ancillary or incidental to the main dwelling.
7. It is said that the structure falls within the definition of a twin-unit caravan within section 13 of the Caravan Sites Act 1968 as amended (CSA). Section 13(1) of the CSA defines a twin-unit caravan as a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.
8. Section 13(2) goes on to state that a caravan shall not include anything that falls within section 13(1)(a) or (b) if its dimensions exceed 20m in length, 6.8m in width and 3.05m in overall height (measured internally from the floor at the lowest level to the ceiling at the highest level).
9. The structure subject of the notice measures 12.4m in length with a width of 6.5m. The Council does not dispute that the dimensions fall within those contained under section 13(2). However, no measurements for the height of the structure have been provided by either party. I saw from my site visit that, internally, there was a vaulted ceiling in the structure. Being more than double my own height and broadly double the height of the internal door frames, it was clear to me visually that the height from the floor at its lowest level to the ceiling at the highest level was more than the maximum 3.05m allowed for in section 13(2) of the CSA. Consequently, on the evidence before me, I find that, regardless of whether the structure falls within section 13(1)(a) and (b), that it cannot be considered as a caravan for the purposes of the CSA.
10. As a consequence, I have considered whether or not the structure is a building as defined by section 336 of the 1990 Act. This includes any structure or erection and any part of a building, but not plant or machinery comprised within a building. Case law has established three primary factors as being decisive of what constitutes a building. These are size, permanence and physical attachment.
11. The structure is designed to provide residential accommodation in the form of an open plan living space with kitchen and living area, three bedrooms and a bathroom. The structure is single storey measuring around 12.4m in length

- and 6.5m in width. The ridge of the dual pitch roof sits broadly level with the eaves of the adjacent two-storey dwelling of 18 Kingswood Close.
12. I note that the structure is not fixed to the ground, nevertheless, it is placed on a plinth system which involves brackets fixing the timber frame to a stone base. It derives stability from its own weight. Furthermore, whilst I note that services can be disconnected reasonably simply, the presence of foul and electricity connections suggest a degree of permanence.
 13. Moreover, there is no suggestion that the structure is intended to be temporary or that it is designed or intended to be moved from one location to another. Although it is indicated that the structure could be lifted by a large crane and place on a flat-bed lorry, from what I have seen of its design and method of assembly I consider this extremely unlikely. It does not seem to be me to be designed with the intention of manoeuvre elsewhere. In addition, the appellants indicate that the structure was assembled on site with a floor constructed first followed by external walls and roof. It seems to me that such operations would normally be those undertaken by a person carrying on business as a builder.
 14. As a result, I find that on the balance of probabilities, the detached timber-framed building subject of the notice amounts to building operations on land and, therefore, amounts to operational development for the purposes of section 55(1) of the 1990 Act.
 15. Section 57(1) of the 1990 Act is clear that planning permission is required for the carrying out of any development of land. However, there is no evidence that the development would be granted planning permission by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or of any planning permission having been granted by virtue of section 58 of the 1990 Act.
 16. Consequently, the matters in the notice amount to development without planning permission and therefore do constitute a breach of planning control.
 17. The appeals on ground (c) therefore fail.

Appeal A on ground (a)

Main Issues

18. The main issue is the effect of the development on the character and appearance of the area.

Reasons

19. The appeal site comprises a two-storey detached dwelling located in a predominately residential area. Kingswood Close is characterised by post war two-storey detached housing set within a small cul-de-sac. Properties are set back from the road behind driveways, with mature back gardens. The appeal site is located on a large corner plot where the road splits in two. The building subject of the appeal is located to the side of the property within the garden.
20. The building is finished in white render to match the main house with window frames also matching. However, whilst I recognise that there are some properties in the estate with white render, the majority of properties are finished in facing brick. Furthermore, the timber fascia, front door and steps to

the front of the building appear at odds to the prevailing use of materials in the area.

21. I note the building covers less than 50% of the garden area of the appeal property. Nevertheless, it has a footprint of around 80.6sqm, extending 12.4m in length and 6.5m in width. Moreover, the front of the building sits in line with that of the main dwelling, whilst there is only a small gap between the building and the main house. In addition, the pitch of the roof sits broadly level with the eaves of the main property. As such, it does not appear subservient to the main property. In contrast, it appears unduly dominant and obtrusive.
22. Moreover, due to its position on a corner plot, its proximity to the footpath and road and the lack of vegetation, the building appears prominently within the street scene. As a result, I find the development to be a discordant feature in the street scene.
23. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area, in conflict with Policy P15 of the Solihull Local Plan Shaping a Sustainable Future 2013 which states that all development will be expected to achieve good quality, inclusive and sustainable development.

Other Matters

24. The appellants have submitted evidence regarding the use of the building as a separate dwelling. However, the notice attacks the construction of a detached timber-framed building on the land. It does not attack the construction of a dwelling. Thus, there is no need for me to consider the issue any further.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

J Whitfield

INSPECTOR