



Appeal Decisions

Site visit made on 22 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 30 October 2019

Appeal Refs: APP/C4615/C/19/3222107 & 3222108

Land at 32 Lavender Lane, Norton, Stourbridge, West Midlands DY8 3EF

- 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 Mr Nigel Burkinshaw & Mrs Gaynor Fellows against an Enforcement Notice (EN) issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 10 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last four years, the erection of an outbuilding ("the Outbuilding") in the rear of the Land which exceeds 2.5 metres in height and is situate within two metres of a boundary of the curtilage of the dwelling house situate on the Land.
 - The requirements of the notice are: 1. To reduce the height of the Outbuilding to 2.5m in maximum height or, 2. To dismantle and remove the Outbuilding from the rear garden of the Land. 3. Remove from the Land all building material debris arising from compliance with step (2).
 - The period for compliance with the requirements is: One month after which this Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

2. The appellants have made several remarks in response to neighbour letters. Many of these are generally around neighbour relations/disputes such as overgrown hedges, CCTV, alleged burning of waste and anti-social behaviour. While these comments are noted, they can play no part in my determination of this appeal which is only proceeding under s174(2)(d) of the 1990 Act.

Reasons

3. S171B(1) of the 1990 Act specifies that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, the appellants must show that, on the balance of probability, the outbuilding was substantially complete for four years prior to the EN being issued, which was 10 January 2019 (hereinafter

- referred to as the “material date”). The burden of proof to make out their case rests with the appellants.
4. The appellants’ invoice from a local timber supplier shows a list of several items and their prices. However, the writing on the invoice is not clear about what those items were or whether they related to constructing the outbuilding. The invoice also does not show when they may have been used. The appellants state that the shed was built in about three weeks over weekends and evenings and that Mr Burkinshaw had help from a carpenter. However, this claim does not specify which year those weekends and evenings were in.
 5. I note that the invoice is dated 14-2-14. I also acknowledge that it has the appeal site address on it and what appears to be Mr Burkinshaw’s mobile telephone number. However, one set of neighbours have stated that the appellants did not move into 32 Lavender Lane until around February 2015 which is one year after the date of the invoice. Also, the same neighbours state that it was around May 2015 that a delivery of wood arrived at the appeal address and construction started. Another set of neighbours roughly corroborate these dates by referring to Mr Burkinshaw moving into No 32 in 2015 and being told a few months later that a shed was to be built.
 6. The appellants have not disputed what the neighbours have said in terms of these dates. They do say though that the shed’s main construction was already up by September 2015. That being the case, that would fit with work commencing after the wood had been delivered based on the timeframe referred to by the neighbours above. If I was to take the date of September 2015 when the shed was substantially completed, that would not be four years before the material date. The outbuilding would have needed to be mostly complete by 9 January 2015.
 7. Whilst the timeline of evidence above is, I consider, already fatal to the appellants case, looking at their photograph dated 11 September 2015 it only shows a small section of the shed. It does not show that the whole structure was substantially complete. Also, the Google earth image which the appellants say is from the early part of 2016 appears to show a material sheeted roof with some exposed rafter ends, which does not match the completed pitched tiled roof that the shed now has. In addition, the neighbours have referred to the outbuilding being worked on over three years. For a period, it is claimed it had a flat roof and then in April-May 2017 Mr Burkinshaw “appeared on top of the building and started to erect rafters and battens then concrete roof tiles”. The appellants have also not contested this evidence.
 8. It looks that the building was mostly complete by earlier this year when some extra cladding and a rear door was added. However, whilst the appellants claim that shed has now been built for over five years, as a matter of fact and degree, for the reasons given, the overall evidence does not show on the balance of probability that the outbuilding was substantially complete for four years prior to the material date. Consequently, the local planning authority was able to take enforcement action against the outbuilding. As such, the appeal must fail and I shall uphold the EN.

Gareth Symons

INSPECTOR