



Appeal Decision

Site visit made on 8 October 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/X4725/C/19/3226834

33 Almshouse Lane, Newmillerdam, Wakefield WF2 7ST

- 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 Jon Prashar against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice was issued on 18 March 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the unauthorised development of a timber shed on the land.
 - The requirements of the notice are: reduce the height of the shed to a height not exceeding 2.5 metres above natural ground level.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) 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. It is directed that the enforcement notice be amended by:
 - a) The deletion of the text '*above natural ground level*' from the allegation, and its substitution with the text '*above the highest ground level immediately adjacent to the building*'.
 - b) The deletion of the text '*3 months*' from the period for compliance, and its substitution with the text '*6 months*'.
2. Subject to these amendments, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

3. The appeal on ground (c) is that there has not been a breach of planning control as the appellant considers the outbuilding to meet the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
4. Class E allows for the provision of outbuildings within the curtilage of a dwellinghouse that are incidental to the enjoyment of a dwellinghouse, subject to a number of limitations and conditions. One of these is that the height of the structure should not exceed 2.5 metres if it is located within two metres of the boundary of the curtilage of the dwellinghouse. In this instance, the side elevation of the building is located on the boundary of the property.

5. The 'Permitted development rights for householders - Technical Guidance' (TG, Department for Communities and Local Government, 2017) explains that, when determining height, the measurement should be taken from the highest ground level immediately adjacent to the building to its highest point. For clarity, I have directed that the wording of the allegation be amended to align with the wording of the TG.
6. The Council state that this point is at the south-west corner, where the shed reaches a maximum height of 3.2m. As such, they contend that the shed does not comply with Class E of the GPDO.
7. Under ground (c), the onus of proof is on the appellant to show that there has not been a breach of planning control. The appellant disputes the Council's position, and states that the building is not above 2.5m when measured from the highest natural ground. However, he does not state the actual height of the structure as built at the point referred to, or offer any corroborative evidence to show that it does not exceed 2.5m. On the site visit, it was not possible to measure the height of the shed at the south-west corner, as it is now only accessible from land belonging to a neighbouring property.
8. However, if the lintel of the door in the elevation facing the house is taken as being a standard height of around 2.1m, plus five vertical boards above of approximately 100mm in depth, plus the eaves and ridge, it is likely that the height of the building exceeds 2.5m. I also saw that the bottom of the door is raised above the flagged surface in front of the shed, which gives additional height above ground level.
9. I am also mindful that this restriction under Class E on the height of a building applies to the whole edifice. The TG clarifies that if any part of the building is within two metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres if it is to be permitted development. It is thus not possible to subdivide the building into parts of differing heights, and any breach of height limits would take the whole structure outside of the permitted development right. In his statement of case, the appellant confirms that the height of the building at the front is 2.8m.
10. Whilst he contends that the additional height above 2.5m is not significant, it nevertheless takes the building beyond the permitted height limit. As ground (a) has lapsed in this particular case, it is not open to me to consider the planning merits of the scheme.
11. Drawing these threads together, I conclude that the appellant has not shown that the construction of the shed falls within permitted development limits. The matters alleged in the notice therefore constitute a breach of planning control and the appeal on ground (c) fails.

The appeal on ground (g)

12. The appeal on ground (g) is that the time given to comply with the notice is too short.
13. The timescale of three months, as set out on the enforcement notice, is considered inadequate by the appellant, and he argues that six months would be a more suitable timescale. From my observations, I am satisfied that the shed is a relatively small building, and so the required works in themselves should not be particularly complex or onerous.

14. However, I am mindful that were I to uphold the three month period sought by the Council, this would now coincide with the darkest months of the year, and with the upcoming Christmas and New Year periods. Taking these factors into account, I consider that a period of six months would be a more reasonable timescale to allow for the completion of the works. I note that, although the Council considers the notice period to be sufficient, they are prepared to countenance such an extension.

15. To that extent, the appeal succeeds on ground (g).

Conclusion

16. Subject to the amendments above, the enforcement notice is upheld.

Elaine Gray

INSPECTOR