

Appeal Decision

Site visit made on 24 October 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 28 November 2019

Appeal Ref: APP/P4415/C/18/3217561

Land at 4 Lingodell Close, Laughton en le Morthen, Rotherham S25 1TD

- 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 Mick Dean against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The notice was issued on 21 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a detached garage (outlined in blue on the attached plan)
- The requirement of the notice is to reduce the height of the garage to a maximum of 2.5 metres.
- The period for compliance with the requirement is within 4 months from the date on which this notice takes effect.
- The appeal is proceeding on the ground as set out in section 174(2)(d) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (d) - that it is too late to take enforcement action

1. The appeal on this ground, as set out in s174(2) of the 1990 Act is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
 2. To succeed on this ground, the appellant must demonstrate, on the balance of probabilities, that the operational development the subject of the notice was substantially completed more than 4 years before the date of the notice i.e. on or before 21 November 2014.
 3. The appellant states that the garage had commenced construction and was above the specified height of 2.5m for permitted development by September 2013, as shown in the photographs submitted, so when the notice was issued, it was too late to take enforcement action against the matters stated therein.
 4. The first photograph was taken in August 2013 and shows commencement of development with ground floor slab only laid. The second was taken in September 2013 and shows two sides of the garage partially built up, with one side of blockwork 13 courses high, claimed to be 2.925m high.
 5. The incomplete blockwork may indeed be over the 2.5m maximum height for an outbuilding to be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as
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- amended). However the development as it existed when photographed was not a discrete operation in itself, or indeed a completed garage.
6. It is undisputed that, as set out in the reasons for issuing the notice, the appellant completed building works on the roof to give the garage an overall height of some 4.2m, "in the last few months" and therefore within the 4 year period prior to issue of the enforcement notice. It is this completed garage building that is properly the subject of the notice.
 7. The appellant may have sought comfort from the fact that the Council had indicated, presumably around the time the photographs were taken and complaints were received, that it would consider enforcement action if the maximum height were to exceed 2.5m. Whether it would have been entitled to take action against the partially built structure at that time is a different issue and not a matter before me. At any rate it was nowhere near a finished structure: the relevant point is that the erection of the garage as described in the notice had clearly not been substantially completed.
 8. Therefore on the balance of probability, the evidence leads me to conclude that the development in question, the erection of a detached garage, was not substantially complete on or before 21 November 2014. Therefore it was not, at the time the enforcement notice was issued, immune from enforcement action. The appeal on ground (d) fails.

Formal Decision

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

Grahame Kean

INSPECTOR