
Appeal Decisions

Site visit made on 29 October 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2019

Appeal A Ref: APP/Z3635/C/19/3225501

Appeal B Ref: APP/Z3635/C/19/3225502

22 Willowbrook Road, Stanwell, Staines-upon-Thames TW19 7AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Varsha Sabharwal of Maya Estates Management Limited and appeal B is made by Mr Kiran Sabharwal against an enforcement notice issued by Spelthorne Borough Council.
- The enforcement notice was issued on 13 February 2019.
- The breach of planning control as alleged in the notice is the unauthorised operational development of two partially rendered metal storage containers with a felt overhanging roof.
- The requirements of the notice are remove from the Land two partially rendered metal storage containers with a felt overhanging roof and side elevation breeze block construction walls and all resultant building materials from the land.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal C Ref: APP/Z3635/X/18/3218294

22 Willowbrook Road, Stanwell TW19 7AB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Rohit Sabharwal against Spelthorne Borough Council.
- The application (Ref. 18/00227/CLD) is dated 12 February 2018.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is building works to erect a single storey garage on land to the rear of 22 Willowbrook Road, Stanwell TW19 7AB.

Appeal D Ref: APP/Z3635/X/18/3217627

22 Willowbrook Road, Stanwell TW19 7AB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Rohit Sabharwal against Spelthorne Borough Council.
- The application (Ref. 18/00675/CPD) is dated 9 May 2018.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a single storey garage being constructed on the current garden. The garage is fully compliant with the requirements of permitted development.

Decisions

1. Appeals A and B are dismissed and the enforcement notice is upheld.
2. Appeals C and D are dismissed.

Preliminary Matters

3. The building subject of these appeals comprises two metal shipping containers that have been adapted with doors and windows cut into them and installed within block walls that have been rendered. The building is located at the rear of the garden, with one end of the containers facing through the blockwork walls onto Albain Crescent to the rear of the property. The development has commenced but has not yet been completed.
4. An enforcement notice was issued by the Council on 13 July 2016 relating to the unauthorised siting of two metal storage containers on the land. Although I understand it was complied with, that notice still remains in force. Containers that had been insulated, boarded and rendered were subsequently brought back onto the site and placed on concrete foundations. Further walls have been built and a roof of timber baton construction with felt finish has been constructed. Consequently, although now adapted and incorporated into a more substantial structure, bringing the containers onto the site has resulted in the development conflicting with this enforcement notice.
5. I note that the development contained within the breach is subject of a stop notice and is not yet complete. I understand that the rafters of the roof would be replaced with those of a shorter width and a boundary wall would be altered. However, in determining the appeal, I need to consider the development as it existed at the time the notice was issued.
6. The reference numbers given on the appeal form for appeals C and D appear to be the same and are reference numbers from the Planning Portal rather than those given to the applications by the Council. I have, therefore, used the reference numbers given in the Council's statement.
7. The Council did not register the application for an LDC in appeal D, so did not subsequently consider it or issue a decision. Nevertheless, it is a validly made appeal so I shall consider it.
8. The Council has confirmed that had it determined the applications for LDCs subject of appeals C and D, they would have been refused.

Appeals A and B

Ground (c)

9. An appeal on this ground is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
10. There is no dispute that the building constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the building.

11. The appellant suggests that the resulting building would comply with Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This grants planning permission for buildings incidental to the enjoyment of a dwellinghouse subject to a number of criteria. My attention has been drawn to the requirements relating to the height of the building. These limit the height of a building with a dual-pitched roof to 4 metres, 2.5 metres if located within 2 metres of the boundary of the curtilage of the dwellinghouse or 3 metres in any other case. The building has a pitched roof and the Council state that the maximum height of the building is 2.78 metres. That has not been disputed by the appellant. Therefore, the issue in this case is whether the building is within 2 metres of the boundary of the curtilage of the dwellinghouse.
12. The appellant has confirmed that the rafters of the roof are intended to be replaced in order to ensure it is more than 2 metres from the boundary. However, as set out above, my decision has to be taken on the development existing at the time the notice was issued. Consequently, I have to conclude that the proposed roof is within 2 metres of the curtilage of the dwellinghouse. As it is over 2.5 metres in height, it does not comply with the GPDO.
13. For these reasons, I conclude that the appeal under ground (c) should fail.

Ground (f)

14. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the containers and roof in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
15. The appellant suggests that the notice should be varied to enable the extension to be modified in line with permitted development rights. However, under the GPDO it is not possible for development to become permitted development retrospectively. It would be necessary, therefore, for the extension to be completely removed prior to undertaking any new construction that might benefit from a planning permission granted by the GPDO.
16. Since an appeal on ground (a) has not been made there is no deemed application for planning permission before me, and hence I am unable to consider granting planning permission for part of the existing development to remain. Allowing part of it to remain would not fully remedy the breach of planning control.
17. For the above reasons, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Appeals C and D

18. Appeal C relates to an LDC for the existing development and appeal D relates to an LDC for proposed development. It would be possible to issue an LDC for proposed development where that development has commenced but is not yet complete, as in this case.

19. However, Section 171 of the Act makes clear that operations are lawful if they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The relevant dates to assess this is the dates on which the LDC applications were submitted to the Council (12 February 2018 and 9 May 2018). I have already concluded the containers that have been incorporated within the building are in contravention of the previous enforcement notice dated 13 July 2016. Hence, an enforcement notice they relate to was in force at the relevant dates, so the existing and proposed works would not be lawful. Therefore appeals C and D must fail.

Conclusion

20. For the reasons given above, I conclude that appeals A and B should not succeed. I shall uphold the enforcement notice.
21. For the reasons given above I conclude that the Council's deemed refusals to grant certificates of lawful use or development in respect of building works to erect a single storey garage were well-founded and that appeals C and D should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

AJ Steen

INSPECTOR