
Appeal Decision

Site visit made on 12 November 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2019

Appeal Ref: APP/V2255/C/19/3229816

The land situated at 32 First Avenue, Queenborough, Kent ME11 5JF

- 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 Haig Squire against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 25 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, the detached brick and block outbuilding constructed at the rear of the premises, the approximate position of which is highlighted on the plan, which in the opinion of the Council would require planning permission.
- The requirements of the notice are:
 - (i) Demolish the building.
 - (ii) Remove from the Land all waste arising from the works undertaken in (1) above.
 - (iii) Remove all hard standing and return the land to its original condition.
 - (iv) Make good any boundary fencing arising from the above actions.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice alleges the unauthorised construction of an outbuilding to the rear of the premises. The requirements of the notice, at (iii), also include the removal of hard standing. However, that exceeds what is alleged in the breach of planning control. I also note that the requirements refer to (1) in (ii) and this would be more clearly expressed as (i). As a result, I will correct the notice to remove the first part of (iii) and change (1) to (i).

The Appeal on Ground (c)

2. 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.
3. There is no dispute that the outbuilding 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 outbuilding.

4. The building referred to in the breach of planning control is a single storey building within what was the garden at 32 First Avenue, Queenborough. The appellant suggests that it benefits from planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995. However, that Order has been superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council have suggested that the building was constructed after the GPDO 2015 was enacted that has not been disputed by the appellant, so I consider that is correct.
5. Class E, Part 1, Schedule 2 of the GPDO 2015 enables the construction of buildings incidental to the enjoyment of a dwellinghouse, subject to a number of criteria. These include that the height of a building within 2 metres of the boundary of the curtilage of the dwellinghouse should not exceed 2.5 metres in height. The eaves should not exceed 2.5 metres in height.
6. The outbuilding has a single pitched roof with the higher side on the boundary with 31 First Avenue. It is located close to the rear of the dwelling and across the width of the rear garden. There is no direct access from the dwelling to the outbuilding. The dwelling is let to tenants. The appellant states that he uses the building for repair of his cars and that the occupiers of the dwelling have access to the outbuilding through the rear gates.
7. Given the layout and relationship between the dwelling and outbuilding, along with the use by the appellant for the repair of cars, I consider that the building is used independently of the dwelling. As such, it is not in a use incidental to the enjoyment of the dwellinghouse, so it does not comply with Class E, Part 1, Schedule 2 of the GPDO.
8. The Council suggest that the building is within 2 metres of the side boundaries of the property and at least 2.7 metres in height, which is above the restrictions set out above. The appellant disputes that and states that it is 2.5 metres in height. It is unclear why the figures are inconsistent. Even if I were to conclude that the appellant's measurements are correct, this would not affect my finding that the building is not incidental to the enjoyment of a dwellinghouse.
9. Since no planning permission has been granted for the development it therefore constitutes a breach of planning control.
10. For these reasons, I conclude that the appeal under ground (c) should fail.

Formal Decision

11. It is directed that the enforcement notice is corrected by substituting the requirements at section 5 with the following:
 - (i) Demolish the building.
 - (ii) Remove from the Land all waste arising from the works undertaken in (i) above.
 - (iii) Return the land to its original condition.
 - (iv) Make good any boundary fencing arising from the above actions.

12. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR