
Appeal Decision

Site visit made on 23 December 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 20th January 2020

Appeal Ref : APP/J1535/C/18/3216474

Land at Bishops Brow, Oak Hill Road, Stapleford Abbots, Essex, RM14 1JL

- 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 Mrs Vera Passey against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 15 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised erection of an outbuilding in the rear garden of the land.
- The requirements of the notice are i. remove the unauthorised outbuilding from the land and ii. remove all resultant debris from the land following compliance with i. above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction

Preliminary matters

1. The notice states that 'the outbuilding is within 2 metres of the boundary adjoining Oak Hill Public House'. The Appellant makes a ground (b) appeal saying that this is an erroneous measurement. But a ground (b) appeal is that the matters alleged have not occurred and there is no dispute that as a matter of fact the outbuilding the subject of the notice has been erected on the site. The measurement is more appropriately dealt with as a preliminary matter.
2. At my site visit I asked the parties to measure the distance between the boundary of the outbuilding and the public house. They did so and agreed that the distance was 2.6 metres. In the event that the notice is upheld as it will cause no prejudice to either party I shall use my powers of correction to substitute the correct measurement.
3. In the absence of payment of the requisite fee the ground (a) appeal has lapsed and I shall not consider the planning merits of the development in this decision. The issue of planning conditions is not relevant as I am not considering a grant of planning permission.
4. The Appellant complains about an alleged non compliance by the Council with the appeal timetable but this is not a ground of appeal and therefore not a matter that I have considered.

Ground (c) appeal

5. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
6. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) provides for permitted development rights for certain classes of development. The Appellant argues that the development has the benefit of permitted development rights by virtue of class E of Schedule 2 Part 1 of the GPDO.
7. Class E provides for the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance , improvement or other alteration of such a building or enclosure subject to certain specified conditions and limitations. Class E.1(e) provides that the height of any such building shall not exceed 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse and 4 metres in the case of a building with a dual-pitched roof.
8. The building is within 2 metres of the eastern fence which forms the end of the garden and the boundary at the rear of the site. It does not have a dual pitched roof. Therefore the 2.5 metre height tolerance applies and this is exceeded on the facts.
9. The Council also argue that the building fails to meet E.1 (f) as the height of the eaves of the building exceeds 2.5 metres but it is not necessary for me to consider this as failure to satisfy E.1(e) is sufficient to prevent the building from benefitting from permitted development rights.
10. For the reasons given above the ground (c) appeal does not succeed.

Ground (f) appeal

11. This ground of appeal is that the steps required to comply with the notice are excessive.
12. There are two purposes which an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice requires removal of the outbuilding thereby restoring the land to its condition before the breach took place. Its purpose is therefore to remedy the breach of planning control and no lesser steps would achieve that purpose.
13. The Appellant argues that the building is a temporary structure and being completely timber framed can be readily adapted or reduced. But no specific lesser steps are proposed that would satisfy the purpose of the notice. It is not within my remit in this appeal to consider alternative undefined options.
14. For the reasons given above this ground of appeal does not succeed.

Ground (g) appeal

15. This ground of appeal is that the time period for compliance with the notice is unreasonably short. The notice provides for a one month compliance period. Although the Appellant does not lodge a ground (g) appeal he complains about the period for compliance. I have therefore considered a hidden ground (g) appeal.
16. The Appellant argues that one month is too short to enable negotiations to be completed with the Council. But the Appellant has not proposed any alternative measures and it is not for me to speculate about any future negotiations between the parties.
17. I have balanced competing interests – the private interest of the Appellant in developing land and the public interest in bringing the identified harm to an end without unnecessary delay.
18. The works required by the notice are not specialist or complex and there is no evidence before me to suggest that they cannot be completed in one month. I find the period of one month to be reasonable and it strikes an appropriate balance between competing interests. I shall uphold the notice.
19. For the reasons given this ground of appeal does not succeed.

Formal Decision

20. It is directed that the enforcement notice be corrected by deletion of the sentence 'the outbuilding is within 2 metres of the boundary adjoining Oak Hill Public House' in paragraph 4 of the notice and substitution of the sentence 'the outbuilding is 2.6 metres of the boundary adjoining Oak Hill Public House.' Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

S.Prair

Inspector