



Appeal Decisions

Site visit made on 10 February 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal A Ref: APP/Z0923/W/19/3235412

13 Springfield Avenue, Whitehaven, Cumbria CA28 6TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by James Stothers against the decision of Copeland Borough Council.
 - The application Ref: 4/18/2354/0F1, dated 31 July 2018, was refused by a notice dated 14 June 2019.
 - The development proposed is described as the erection of a garden shed to the side of the property between the main property and the garden side boundary.
-

Appeal B Ref: APP/Z0923/C/19/3235419

Appeal C Ref: APP/Z0923/C/19/3235420

Land at 13 Springfield Avenue, Whitehaven, Cumbria CA28 6TT

- 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 appeals are made by Mr James Stothers (Appeal B) and Mrs June Stothers (Appeal C) against an enforcement notice issued by Copeland Borough Council.
 - The enforcement notice was issued on 26 July 2019.
 - The breach of planning control as alleged in the notice is: The erection of an outbuilding contrary to permitted development rights afforded by Schedule 2 Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The requirements of the notice are:
 - Remove the timber outbuilding, approximate location marked in blue on the attached plan, from the land.
 - The period for compliance with the requirements is 90 days.
 - Appeal B is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
 - Appeal C is proceeding on the grounds set out in section 174(2) (f) 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 deemed to have been made under section 177(5) of the Act as amended, has lapsed.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for a garden shed at 13 Springfield Avenue, Whitehaven, Cumbria CA28 6TT in accordance with the terms of the application Ref: 4/18/2354/0F1, dated 31 July 2018 and the revised plans submitted with it.

Appeal B and Appeal C

2. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended (Appeal B).

Appeal A and Appeal B on ground (a), deemed planning application

Background and Procedural Matters

3. The deemed planning application (Appeal B) relates to the timber shed/outbuilding which has been constructed between the flank gable wall of the host property and its common boundary with the neighbouring property, No 15 Springfield Avenue. The shed has been constructed on a raised platform and according to the Council Officer's report, its overall height is 3.7m to its ridge and 3m in height to the eaves. Appeal A relates to the Council's decision to refuse to grant planning permission for this shed, including a revised proposal to carry out modifications to it in order to reduce its roof height by 0.75m. The Council based their decision on those revised plans and my decision on Appeal A has been made on the same basis.

Main issues

4. The main issues in this case are the effect of the development on the:
 - character and appearance of the area; and
 - living conditions of the occupiers of neighbouring properties, with particular regard to outlook.

Character and appearance

5. The appeal property is situated on a residential estate which is characterised by a mix of semi-detached properties and the occasional short terrace. The properties have a rendered finish, and many have been extended to the side and have had front porch additions. The houses are set back from the road with enclosed front gardens/driveways which give the street a relatively spacious feel.
6. It is not particularly unusual for a shed to be constructed within the side garden of a dwelling where it is visible from the street. Nor do I consider that the use of timber as a material of construction for this utilitarian building is inappropriate in this location. I noted from my observations on my site visit that the timber boarding has weathered over time and now has a grey tone which is similar in appearance to the colour of the rendered finish of the host property. The materials of construction of the shed are not therefore out of character and nor are they harmful to the appearance of the host property.
7. However, the height of the unauthorised shed does give the building an incongruous appearance, particularly when viewed from the street. Its eaves height extends well above the top of the host property's adjacent ground floor front window, which gives the shed a disproportionate appearance. Furthermore, the elevated location of the shed and absence of any fenestration to its front elevation heightens its incongruity and prominence.

8. For this reason, the overall appearance of the shed, by reason of its excessive height, has a harmful effect on the character and appearance of the area. The development therefore conflicts with the development plan, and in particular with Policies ST1 and DM18 of the Copeland Local Plan 2013 - 2028, adopted Core Strategy and Development Management Policies (LP) which seek to ensure, amongst other criteria, that new development and extensions are of a high quality design and the scale, design and choice of materials respect the character of the parent property.
9. However, Appeal A includes a proposal to reduce the height of the shed and reduce its overall height by 0.75m. From my own observations on site this would bring the eaves height of the building down to a position where it would roughly align with the top of the property's front living room window. This modification would provide a more proportionate building and significantly reduce the prominence and incongruity of the building's existing front façade. The revised design would overcome the existing harm and protect the character and appearance of the street scene. In addition, there would be no conflict with Policies ST1 and DM18 of the LP.

Living conditions

10. There is no doubt that the shed is visible to views from the windows of neighbouring properties. However, it is not sited close to any of those properties' habitable room windows and it does not therefore have a harmful enclosing or overbearing impact on the outlook for the occupiers of them.
11. I conclude that the unauthorised shed (Appeal B) does not have a harmful effect on the living conditions of neighbouring residents, with particular regard to outlook. For the same reasons the shed with proposed modifications to its height (Appeal A) would also not have a harmful effect on their living conditions. There is therefore no conflict with Policy DM18 of the LP which requires, amongst other things, domestic extensions and alterations to protect the living conditions of the occupiers of the parent property and adjacent dwellings.

Other Matters

12. I have taken into consideration third party concerns over the use of the building for golf practice and the noise that is associated with that use. However, I have not been provided with any substantive evidence that would suggest that the appellant is utilising the shed for purposes that are not incidental to the enjoyment of his home. It is for that purpose which planning permission is sought, both through the deemed planning application and section 78 appeal, and it is on that basis alone that I have determined the appeal. I therefore give this consideration limited weight.
13. I appreciate the concerns raised regarding the use of security lights. However, this is not a matter for my consideration in this appeal.

Conditions

14. The development is conditional on being carried out in accordance with the revised plans submitted the application as this provides certainty. However, the suggested condition that the shed is only used for purposes incidental the enjoyment of the dwellinghouse is not necessary. The planning permission granted is for a garden shed within the residential curtilage the dwellinghouse.

The use of the shed is therefore already restricted to purposes incidental to the residential use of that dwelling.

Conclusions

15. Although I have found that there is no harm to the living conditions of neighbouring residents in either Appeal A or Appeal B, I have found that the deemed planning application has a harmful effect on the character and appearance of the area (Appeal B). However, there is no harm to the character and appearance of the area in Appeal A. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that Appeal A succeeds and the appeal on ground (a) (Appeal B) fails.

Appeals on ground (f) (Appeals B and C)

16. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
17. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.
18. The appellants are of the view that if Appeal A is successful, then it would be excessive to have to remove the shed from the Land. Instead the shed could be modified in accordance with the details of the planning permission granted.
19. I have granted planning permission for the shed with modifications and the appellants are now able to rely on the operation of section 180 of the 1990 Act. Section 180 states that where, after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
20. However, nothing short of the complete removal of the shed would remedy the breach of planning control alleged in the notice and the steps required are not excessive to achieve that purpose. The appeals on ground (f) therefore fail.

Overall Conclusions

Appeal A

21. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

Appeal B and Appeal C

22. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR