



Appeal Decision

Site visit made on 3 December 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 02 March 2020

Appeal Ref: APP/J0540/C/18/3216349

204 Dogsthorpe Road, Peterborough PE1 3PB

- 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 by Mr Z Mehmood against an enforcement notice issued by Peterborough City Council.
 - The enforcement notice, ref. 18/00209/ENFACC, was issued on 10 October 2018.
 - The breach of planning control alleged in the notice is the erection of a detached garden building.
 - The requirements of the notice are to:
Demolish the detached garden building and remove from the Land the material resulting from the demolition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
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Decision

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

Application for costs

2. An application for a partial award of costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Preliminary matters

3. This case initially included a ground (a) appeal. However, soon after submission of the appeal, a separate s.78 appeal against refusal of planning permission for retention of the detached garden building subject of this notice was dismissed¹. The ground (a) appeal was subsequently withdrawn.

The appeal on ground (f)

4. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections. The appellant argues that the building could be reduced in height to conform with the requirements of Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) – that is, a

¹ Decision notice ref. 18/1027/HHFUL dated 1 August 2018.
Appeal ref. APP/J0540/D/18/3212995, dated 11 December 2018.

height of 2.5 metres for a building within 2 metres of the boundary of the dwellinghouse curtilage.

5. However, Article 3(5)(a) of the GPDO states that:

'The permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.'

Planning permission for this building has been refused and the appeal dismissed. The existing building is therefore unlawful, and it follows there are no permitted development rights available under Class E. Nevertheless, there is a fallback position that a building conforming with the limitations set out in Class E could be built.

6. However, a building constructed under the provisions of Class E must be for a purpose incidental to the enjoyment of the dwellinghouse as such. Although it is indicated that the building is a gym/store and playroom, the building as it exists is unfinished with little indication of its final layout or purpose. In the circumstances I cannot assess whether or not the use could be regarded as reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. Nor, in a ground (f) appeal, could I impose any conditions as to the future use.
7. A further aspect is the practicability of the proposed reduction in height. At present the eaves height above ground level is about 2.80 metres measured at the north-western corner of the building – that is, the dimension from ground level at the base of the external wall to the point where the wall would meet the upper surface of the roof slope². The proposed eaves height reduction would therefore be about 0.3 of a metre.
8. The drawing submitted showing the proposed reduction is very much an outline and lacks detail. From my observations it appears unlikely that the reduction could be carried out without such radical alterations to the ceiling level, and probably the lintel levels – and consequently the windows and doors – that this would be a substantially different building. The suggestion that the floor could be lowered to make the alteration feasible would only increase this divergence. I do not consider this proposal to be a realistic lesser step. The appeal on ground (f) therefore fails.
9. The ground (f) proposal should be considered as a scheme for which planning permission is required. However, I note that the dismissal of the 2018 appeal was in part because of the effect of the overall length of the building on occupants of neighbouring property – an aspect of the building that would not be changed.

The appeal on ground (g)

10. This ground is that the compliance period of 3 months is too short. The appellant argues that a period of 5 months would be appropriate in order to allow for possible delay over holiday periods. However, it appears to me that it would be possible to arrange for the demolition within a period of 1 month, and that 2 months would be sufficient to carry out the works without any interference of long holiday periods. Furthermore, it is apparent that several neighbours are caused significant distress by the proximity of the building, and

² As defined in the DCLG document 'Permitted Development for Householders – Technical Guidance' of April 2017.

I can see no good reason why this should be continued longer than necessary.
The appeal on ground (g) therefore fails.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

Stephen Brown

INSPECTOR