



Appeal Decisions

Site visit made on 22 July 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal A: APP/D1780/C/19/3224903

Appeal B: APP/D1780/C/19/3225640

Land at 62 Coxford Close, Southampton SO16 6DB

- The appeals are 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 Adil Osman (Appeal A) and Ilona Osman (Appeal B) against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 8 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an outbuilding on the land.
 - The requirements of the notice are: (i) Remove the outbuilding from the land. (ii) Remove all resultant materials from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) 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 for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Summary of Decisions

1. The appeals are dismissed.

Preliminary Matter

2. The appellants state that the reasons for issuing the enforcement notice are unfounded. However, as no ground (a) appeal is before me I am unable to consider the planning merits of the outbuilding that has been enforced against.

The ground (c) appeals

3. For the appeals to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because planning permission has already been granted for the matter alleged in the enforcement notice, namely an outbuilding, or it is permitted development.
4. The site is occupied by a three-storey block of flats situated in close proximity of Coxford Close. The outbuilding enforced against is situated between the block of flats and the highway in an area of garden serving one of the flats.
5. The outbuilding is of makeshift appearance and construction. I am satisfied on the balance of probabilities from my site visit that owing to its size, permanence, in that it has been constructed since at least mid-2018, and that it

has physical attachment to the ground, the outbuilding amounts to a building operation and is therefore development for the purposes of Section 55 of the Town and Country Planning Act 1990, as amended.

6. The appellants contend that there is no legislative basis to restrict a flat from having a shed/outbuilding in its garden. That issue is twofold, namely whether planning permission would be granted for the outbuilding enforced against, which is not a matter before me, or whether it would be permitted development.
7. Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) relates to buildings within the curtilage of a dwellinghouse. Within the interpretations of the GPDO it is stated that the term dwellinghouse '*...does not include a building containing one or more flats, or a flat contained within such a building;*'.
8. It therefore follows that there is no permitted development right for the appellant to construct an outbuilding within their garden, because it is not located within the curtilage of a dwellinghouse. That the appellants own the garden as well as a garage does not alter the fact that their residential property is a flat for planning purposes; neither does that amount to a unique or exceptional set of circumstances.
9. The appellants have not brought to my attention any other evidence to demonstrate on the balance of probabilities that there has not been a breach of planning control. The appeals on ground (c) consequently must fail.

Conclusion

10. For the reasons given above I conclude that the appeals should not succeed. I shall therefore uphold the enforcement notice and dismiss the appeals.

Formal Decisions – Appeals A and B

11. The appeals are dismissed.

Paul T Hocking

INSPECTOR