



# Appeal Decision

Site visit made on 30 June 2020

**by Zoë Franks Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>TH</sup> AUGUST 2020**

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**Appeal Ref: APP/G0908/C/20/3248034**

**Sunnybrae, Papcastle, Cockermouth, Cumbria**

- 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 Iain Jones against an enforcement notice issued by Allerdale Borough Council.
  - The enforcement notice, numbered ENF/2020/0001, was issued on 7 February 2020.
  - The breach of planning control as alleged in the notice is the unauthorised erection of a shed/summerhouse with associated decking to the front curtilage area of Sunnybrae.
  - The requirement of the notice is to remove the unauthorised shed/summerhouse and its associated decking.
  - The period for compliance with the requirements is 1 month.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (d) of the Town and Country Planning Act 1990 as amended ("the TCPA").
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## Decision

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

## Grounds (b) and (c)

2. The appellant's case is that the shed/summerhouse replaced an existing shed that had been in the same location for many years at least back to when the property was purchased in 1987. The appellant's case is that the replacement building used the same foundations and that planning permission was not required for the shed and that the decking did not require permission as it benefited from permitted development rights.
3. In order to succeed on a ground (b) appeal it is necessary to prove that the matters alleged in the notice did not occur. Both parties accept in this case as a matter of fact that the new shed/summerhouse has been constructed as alleged and so this ground cannot succeed.
4. This dispute between the parties is whether the erection of the new structure constitutes a breach of planning control which is dealt with by way of a ground (c) appeal.
5. The breach of planning control alleged on the Notice is the erection of a shed/summerhouse with associated decking which falls within the definition of development under section 55(1) of the TCPA. Section 55(1A) says that building operations include, among other things, the demolition of buildings and rebuilding which covers the situation in this appeal.
6. The shed/summerhouse is not excluded from the definition of development by section 55(2)(a) as it is agreed by the Appellant that the whole structure has been replaced.

7. Planning permission would therefore have been required for the carrying out of the development. The appellant's case regarding the decking is that express planning permission was not required as the development benefited from permitted development rights and the onus of proof is on the appellant.
8. Notwithstanding that there is a narrow lane separating the garden from the house, I am satisfied as a matter of fact and degree that the building is located within the curtilage of the dwellinghouse. However, the structure taken as a whole does not benefit from permitted development rights under Part 1 of the General Permitted Development Order 2015 ("the GDPO"). This is because the shed/summerhouse, which includes the integral decking, is situated on land forward of the wall forming the principal elevation of the dwellinghouse which precludes Part 1, Class E from applying<sup>1</sup>. Even had the decking been erected as a stand-alone structure in this location, it would not have benefited from permitted development rights for the same reason.
9. I conclude that the appellant has not shown that the shed/summerhouse and decking either did not require, or indeed, had the benefit of planning permission (whether under an express permission or by way of permitted development rights under the GDPO).

#### **Ground (d)**

10. To succeed on an appeal on this ground the appellant has to prove on a balance of probabilities that no enforcement action could be taken in respect of the breach of planning control (i.e. the erection of the shed/summerhouse and decking) because it took place more than four years before the service of the notice. The appellant has not provided evidence that this is the case here and the appeal on this ground therefore fails.

#### **Reasons**

11. For the reasons given above I consider that the appeal should not succeed.

*Zoë Frank*

INSPECTOR

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<sup>1</sup> GDPO, Part 1, Class E, Paragraph E.1 (c)