



Appeal Decision

Site visit made on 11 August 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/D1780/C/19/3243765

Land at 106 Radcliffe Road, Southampton SO14 0PR

- 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 Mohammed Ilyas against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 22 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, erection of an outbuilding located at the rear of 106 Radcliffe Road which has been attached to the property at 39 Union Road.
- The requirements of the notice are (i) Remove the outbuilding; (ii) Reinstate the side elevation of 39 Union Road to its former condition; (iii) Lower both boundary walls adjacent to 41 Union Road and 104 Radcliffe Road to a maximum height of two metres following demolition of both side elevations of the outbuilding; (iv) Remove all resultant materials from the demolition of the outbuilding form (*sic*) the land and reinstate the land to its former condition.
- The period for compliance with the requirements is 56 days.
- The appeal is 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 Decision: The appeal is dismissed and the enforcement notice upheld.

Ground (c) appeal

1. The ground of appeal is that the matter alleged in the enforcement notice did not constitute a breach of planning control. It is for the appellant to show that their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
2. The appeal site contains a mid-terrace dwelling with a part two storey, part single storey rear outrigger. An outbuilding has been erected at the end of the rear garden. Building operations fall within the definition of development at s55(1) of the 1990 Act, for which planning permission is required by reason of s57(1) of that Act. The appellant argued that the outbuilding was granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Article 3, Schedule 2, Part 1, at Class E. This Class grants planning permission for the erection within the curtilage of a dwelling of an incidental or ancillary building subject to the size, height and locational imitations set out in paragraph E.1.

3. Paragraph E.1 (e) (ii) of Class E limits an outbuilding to no more than 2.5 metres in height, where it is within 2 metres of the curtilage boundary. During my site visit however it was established that the outbuilding, which is within 2 metres of the curtilage boundary, is in excess of 2.5 metres in height, thereby exceeding the limitation at paragraph E.1 (e) (ii). As a result, the outbuilding is not permitted by Class E, even if all the other limitations of that Class have been satisfied.
4. Moreover, the planning permission granted by the GPDO Article 3, Schedule 2, Part 1 does not extend to land which is outside the curtilage of a dwelling. There is no definition of 'curtilage' for the purposes of that Part in the GPDO. The Government's Technical Guidance¹ describes the curtilage as land which forms part and parcel with the house. General principles applicable to a curtilage have been established by the Courts. In *Dyer v Dorset CC* [1988] 3 WLR 213, it was held that curtilage bore its restricted and established meaning, connoting a small area forming part or parcel with the house or building which it contained or to which it was attached. In *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195, the Court held that to be regarded as part of the curtilage the land should serve the purpose of the dwelling in some reasonably necessary or useful way. Tests of physical layout, ownership past and present and use or function past and present were also endorsed recently in *Burford v SSCLG & Test Valley BC* [2017] JPL1300. Therefore, what amounts to the curtilage of the dwelling is a matter of fact and degree, applying the above principles.
5. Similar terraced residential properties are on both sides of the site, with 39 Union Road (No 39), an end of terrace dwelling, at the rear. It would be unusual in an established residential context, such as in this case, for the curtilage of the dwelling to not be contiguous with the boundaries with adjoining residential properties. There is no firm evidence to suggest that any land other than the front and rear gardens could be regarded as forming part and parcel with the dwelling or as serving it in some reasonably necessary or useful way. Such a statement could not sensibly be applied to land beyond the front and rear gardens of the dwelling. There was also no firm evidence to show that, in terms of the layout, ownership or function past and present, any land adjoining the rear garden possessed attributes that might be indicative of it forming part of the curtilage of the dwelling. Based on the available evidence, such adjoining land is more likely to form part of the curtilages of adjoining dwellings. It follows that, as a matter of fact and degree, the curtilage of the dwelling is unlikely to extend beyond its gardens.
6. Both the outbuilding side walls have been built on top of walls which I am given to understand form the common boundary with adjoining land. The fascia boards, guttering and roof tiles overhang the adjoining land. Also, the rear wall and roof of the outbuilding have been physically attached to the flank wall of No 39. This suggests that parts of the outbuilding have been built beyond what could reasonably be regarded as part of the dwelling's rear garden. In turn, this indicates that the outbuilding is not built entirely on land which is within the curtilage of the dwelling. Therefore, even if the outbuilding had otherwise satisfied the limitations of Class E, it could not have been granted planning permission by the GPDO Article 3, Schedule 2, Part 1, Class E in any

¹ Permitted development rights for householders: Technical Guidance MHCLG September 2019.

event and express planning permission should have been obtained prior to its erection.

7. Accordingly, on the balance of probability erection of the outbuilding constituted a breach of planning control. The ground (c) appeal fails.

Conclusion

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

Formal Decision

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

Stephen Hawkins

INSPECTOR