



Appeal Decision

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 28 August 2020

Appeal Ref: APP/G1630/C/19/3243106

26 Sallis Close, Northway, Tewkesbury, Gloucestershire GL20 8TA

- 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 Raymond Tunnicliffe against an enforcement notice issued by Tewkesbury Borough Council.
 - The enforcement notice was issued on 14 November 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a single story timber side extension, close board timber fencing and a gate.
 - The requirements of the notice are:
 - (1) Demolish the single story timber side extension.
 - (2) Remove the close board timber fence and gate erected along lines shown in blue on the attached plan.
 - (3) Remove all resultant materials from compliance with steps (1) and (2) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The appeal was made on ground (d). However, the appellant has raised issues which amount to hidden appeals on grounds (b) and (c). The Council has had an opportunity to consider the representations made by the appellant and I will therefore determine the appeal as proceeding on these three grounds. The onus is on the appellant to make his case on these grounds and the relevant test is 'the balance of probabilities'.
3. The appellant has described why he wishes to keep the alleged extension, fence and gates – for reasons which include privacy, security and personal circumstances. However, I am unable to consider the planning merits of the development, because the appellant has not made an appeal on ground (a) and paid the fee for consideration of the deemed planning application.
4. I wrote to the parties to advise that, having reviewed the representations and evidence, I was satisfied that I did not need to see the appeal site in order to reach a decision, and that not doing so would not be prejudicial to either party.

The Appeal on Ground (b)

5. Ground (b) is that the matters alleged by the notice have not occurred. The appellant states that the alleged extension is not an addition to the dwellinghouse but a shed. However, his photographs show that the structure is

built against and utilises the side wall of the dwelling. It can be reasonably and accurately described as a single storey timber side extension.

6. It may be that the extension is used for garaging or storage like a shed, but the notice does not need correcting to say that because it does not describe the use of the structure. I find, on the balance of probabilities, that the breach of control alleged in the notice, has occurred. The ground (b) appeal fails.

The Appeal on Ground (c)

7. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The appellant suggests that there was a shed on the site which was lawful and it was rebuilt after floods in 2007. I accept that evidence, but once a building is demolished, for whatever reason, the construction of something new in its place is still development that requires planning permission.
8. Article 3 and Schedule 2, Part 1, Class A of the GPDO¹ grant planning permission for the enlargement, improvement or other alteration of a dwellinghouse. There are also 'permitted development' (PD) rights under Schedule 2, Part 2, Class A of the GPDO for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure,. However, the construction of the estate at Sallis Close was granted planning permission subject to a condition which removed those and other PD rights²:

Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (or any Order revoking and re-enacting that Order), no private car garages, extension, garden sheds, gates, fences, walls, other means of enclosure, satellite antennae or structures of any kind (other than hereby permitted) shall be erected or constructed on this site without the prior express permission of the Local Planning Authority.

9. Whilst the appellant considers this to be 'an old and outdated law', there is no evidence to show that the condition is no longer in force. Planning permission would need to have been granted for the removal or variation of the condition. It follows that there are no PD rights for the construction of the alleged extension, fencing and gate. The works required express planning permission and the appellant has not shown that any such permission has been granted.
10. Moreover, it appears that the alleged extension, fence and gate would not be permitted by the GPDO even if the condition was not in place, because the extension is not built in materials to match the house³ and the fence and gate are likely to be more than 2m high⁴.
11. I conclude that the appellant has not demonstrated that any of the matters alleged in the notice are not in breach of planning control on the balance of probabilities. For that reason, and since I cannot comment on whether the Council has enforced against other breaches, the appeal on ground (c) fails.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² Condition (f) of planning permission reference: 93/5319/0456/FUL

³ As required by condition A.3(a) imposed on development permitted by the GPDO under Part 1, Class A

⁴ In breach of condition A.1 imposed on development permitted by the GPDO under Part 2, Class A

The Appeal on Ground (d)

12. An appeal against an enforcement notice on ground (d) is a claim that the alleged breach of planning control is immune from enforcement action due to the passage of time. In order to succeed on ground (d), it is for the appellant to demonstrate (on the balance of probabilities) that the operational development was substantially completed four years before the date of the enforcement notice. The material date in this case is 14 November 2015⁵.
13. I have already noted that there was a pre-existing shed on the site which was damaged by floods. The appellant states that he built the alleged extension in 2010 or 2011 – and that was more than four years before the notice was issued – but he has not provided evidence of the works. That is important because an aerial photograph submitted by the Council suggests that the extension was not on the site in 2013. Indeed, the photograph shows what looks to be a bright white object within the footprint of the extension.
14. By contrast, an aerial photograph from 2017 does show the alleged extension in place – as it then was, as confirmed by the Council’s site visit photographs from January 2017. Since the Council took those photographs on the day it was alerted to the erection of the extension, and there is no evidence of it being built on some earlier date, it seems on the balance of probabilities that it was not substantially completed four years prior to the issue of the notice.
15. Similarly, I accept that there was a pre-existing fence as the appellant claims and as shown in the Council’s 2009 Street View image. However, the 2017 and 2019 photographs show a fence that is plainly higher and newer, and they also show what appears to be a new gate across the driveway. There is nothing from the appellant to show that the fence and gate on the site have been in place for more than four years on the balance of probability.
16. I conclude that the appellant has failed to demonstrate, on the balance of probabilities, that the alleged extension, fencing and gate were substantially complete by 14 November 2015, so as to have gained immunity from enforcement action through the passage of time. It follows that the appeal on ground (d) does not succeed.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Richard S Jones

INSPECTOR

⁵ s171B(1) of the Town and Country Planning Act 1990