



Appeal Decision

Site visit made on 10 July 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Appeal Ref: APP/C4615/C/20/3246669

Land at 3 Culmore Road, Halesowen, West Midlands, B62 9HP

- 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 Munir Asif against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 6 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the erection of an outbuilding ("the Outbuilding") to the rear of the property.
 - The requirements of the notice are:
 1. To dismantle and wholly remove the Outbuilding from the rear of the Land.
 2. Remove from the Land all building material and debris arising from compliance with step 1.
 - The period for compliance with the requirements is one month after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. The planning history for the appeal site is relevant to the determination of this appeal. Planning permission was granted on 12 March 2019¹ for the 'erection of 1 detached house with rear dormer (following demolition of existing dwelling)'. The approved scheme shows a layout of the site that does not include the outbuilding subject of this appeal.
2. The appellant has provided photographs² showing that the works to construct the outbuilding began prior to the demolition of the original dwellinghouse on the site. This is not disputed by the Council.
3. The original dwellinghouse was then demolished and the Council's photographs³ show work continuing on the outbuilding at the same time as the works were taking place to construct the new dwellinghouse that I saw on the site on my visit.

¹ Council reference P19/0023.

² Photographs attached to the appellant's appeal statement relating to his ground (c) appeal. These are labelled 'photo 1' and 'photo 2'.

³ Photographs at appendix 5 of the Council's appeal statement.

4. Whilst the enforcement notice lists a number of policies that it suggests the development is contrary to, no reason is given within the notice for its issue⁴. However, having regard to the Council's evidence, it is clear that its concerns are that harm has been caused as the outbuilding has prevented the appellant from laying out the site and off street parking spaces in accordance with the plans approved by virtue of the P19/0023 planning permission. In this regard I note that condition 2 of the planning permission requires the development to be carried out in accordance with the listed plans, which include the approved layout plan. Furthermore, condition 5 prevents the occupation of the development until the additional parking spaces shown on the approved plans have been laid and surfaced.
5. It is not ideal that the enforcement notice fails to specify the reasons for its issue. However, I am not minded to find the notice invalid because of this, particularly as the appellant was alert to the Council's concerns and has responded to these in his evidence.
6. Notwithstanding this, the development subject of this appeal is clearly incompatible with the planning permission granted for the erection of a dwellinghouse on the site as the outbuilding prevents the site, particularly the outdoor space and parking provision, from being laid out in accordance with the approved scheme. The enforcement notice is not, however, directed at the erection of the dwellinghouse⁵ or a breach of the P19/0023 planning permission⁶. It is directed at the erection of the outbuilding and informs that it is a breach of planning control referred to in section 171A(1)(a)⁷ of the Act. I have determined the appeal on this basis and have concluded that the appeal should succeed under ground (c) for the reasons given. This decision leaves unresolved the conflict between the P19/0023 planning permission and the permission granted for the outbuilding by virtue of Class E Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order). I am not able to resolve this conflict within the remit of this appeal.

Ground (c)

7. To succeed on ground (c), the appellant must demonstrate that on the balance of probability the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
8. It is the appellant's case that the outbuilding is development that benefits from the permitted development rights granted by Class E Part 1 of Schedule 2 of the Order. There is no disagreement between the parties that the outbuilding is within the curtilage of a dwellinghouse, or that any of the criteria listed in paragraph E.1 under Class E apply to the development. The Council are, however, of the view that, having regard to its time of construction and intended use, the development is not required for a purpose incidental to the enjoyment of the dwellinghouse. For these reasons it suggests that the building does not benefit from the permission granted by Class E.

⁴ As required by regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

⁵ i.e. a breach of planning control by carrying out development without the required planning permission as referred to in section 171A(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).

⁶ i.e. a breach of planning control by failing to comply with any condition or limitation subject to which planning permission has been granted as referred to in section 171A(1)(b) of the Act.

⁷ Carrying out development without the required planning permission.

9. As noted above, the appellant has provided photographic evidence to demonstrate that works to construct the building had commenced prior to the demolition of the original dwellinghouse on the site. The Council does not dispute this, but notes that the original dwellinghouse was vacant and boarded up pending its demolition at the time that construction of the outbuilding had begun. It also states that the works to construct the outbuilding were still underway whilst the new dwellinghouse was being erected on site.
10. It is settled caselaw that, in order to determine whether development benefits from the permission granted by a particular provision of the Order, it is necessary to consider the position at the point the development was begun. In this case the development was begun at a time when the original dwellinghouse was in situ. At this time the appellant was entitled to exercise the permitted development rights granted under Class E. That the dwellinghouse was vacant pending its demolition is of no relevance in this case. A dwellinghouse need not be occupied for development within its curtilage to benefit from the permission granted by Class E. Furthermore, the subsequent demolition of the dwellinghouse would not affect the planning permission granted by Class E, regardless of whether or not the outbuilding had been substantially completed prior to the demolition.
11. With regard to the use of the outbuilding, in the completed planning contravention notice⁸ (PCN) it is stated that the intended use of the building is for a domestic use, including for storage and a gym. As is evident from the Council's photographs⁹, the building comprises three separate rooms. On my site visit I noted that, compared to the condition of the rooms in the Council's photographs, works to the three rooms had progressed. The rooms either end of the building had been decorated and fitted with domestic type hard flooring. One of these rooms was being used for the storage of rolls of carpet, whilst the other was empty. The room in the middle of the building had also been decorated and fitted with a toilet and a small sink.
12. Having regard to the above, whilst I did not see any gym equipment in the building, I am satisfied that my findings on site are consistent with the intended use described in both the PCN and the appellant's appeal statement. I am also satisfied that this use of the building accords with that permitted by Class E. Whilst I note the guidance provided in the Permitted Development Rights for Householders Technical Guidance, the presence of a w.c. within the building does not render it a building that provides primary living accommodation, particularly as the w.c. could only be accessed from the garden and not directly from either of the other two rooms.
13. On the basis of the evidence before me, I conclude that on the balance of probability the outbuilding benefits from the planning permission granted by virtue of Class E Part 1 of Schedule 2 of the Order. Accordingly, the matter alleged in the enforcement notice does not constitute a breach of planning control and the ground (c) appeal succeeds.

Conclusions

14. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

⁸ Completed by J Jowitt, who is the appellant's agent in this appeal.

⁹ Appendix 5 and 8 of the Council's appeal statement.

15. In these circumstances, the appeal on grounds (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

Formal Decision

16. The appeal is allowed and the enforcement notice is quashed.

J Moss

INSPECTOR