



Appeal Decisions

Site visit made on 15 September 2020

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 September 2020

Appeal A Ref: APP/P0119/C/20/3249578

30 Great Clover Leaze, Stoke Gifford, South Gloucestershire BS16 1GG

- 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 Dr Abdulsalam Alsaleh against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, Ref: COM/19/0780/OD/2 was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of a gazebo with Perspex privacy glazing in the rear garden.
 - The requirements of the notice are:
1. Remove the gazebo, Perspex screening and all associated materials from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (e) 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.
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Appeal B Ref: APP/P0119/C/20/3249611

Appeal C Ref: APP/P0119/C/20/3249612

30 Great Clover Leaze, Stoke Gifford, South Gloucestershire BS16 1GG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal B is made by Dr Abdulsalam Alsaleh, and Appeal C is made by Mrs Darin Hassoun, both against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, Ref: COM/19/0780/OD/1 was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of a single storey front, side and rear extension.
 - The requirements of the notice are:
1. Remove the single storey front, side and rear extension and all associated materials from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (e) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeals A, B and C

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural matters

2. Many of the appellants' arguments relate to all three appeals, and therefore I shall deal with them together, separating out the two different enforcement notices where necessary.
3. The appellants have objected to the Council explaining in its statement why, in its opinion, the developments subject of the appeals do not constitute permitted development, on the basis that the permitted development criteria were not specifically identified in the enforcement notice. However, the notices merely allege that the developments have been carried out without planning permission, and there is no necessity to explain within the notice why permitted development criteria do not apply. The onus of proof on a ground (c) appeal lies with the appellants; in this case it is claimed that the developments fall within the permitted development provisions. The Council is entitled to seek to rebut those arguments with specific reference to the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). I shall therefore take those comments into account.
4. The building subject of Appeals B and C is attached to the dwellinghouse by timbers forming an open arbour over the path which runs between the two. I understand that the arbour was previously roofed in Perspex, but this roofing material has since been removed. As the building is physically attached to the dwelling by means of timber I consider that it should be treated as an extension to the dwellinghouse rather than an outbuilding. However, for the reasons I shall explain below, the distinction is academic, and nothing turns on it.

Reasons

Appeal on ground (e) – that copies of the notice were not served as required by section 172 of the Act – appeals A,B and C

5. The appellants say that the owner of the site is Mr Basel Alsaleh, who lives in Hama, Syria. The Council left a copy of the enforcement notice addressed to Mr Basel Saleh at the appeal property. Section 172(2) of the Act says that a copy of an enforcement notice shall be served –
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. Thus, as owner, the Council was required to serve notice on Mr Basel Alsaleh. The Council says that the Land Registry records that the address of the owner is that of the appeal property. Section 329 of the Act deals with the service of notices and says at s.329(1) that any notice or other document required or authorised to be served or given under this Act may be served or given either—
 - (a) by delivering it to the person on whom it is to be served or to whom it is to be given;
 - or
 - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
 - (c)(circumstances which do not apply here).

7. The Council says that it did not know of any other address for Mr Basel Alsaleh. The appellants say that the Council officers were told by Dr Alsaleh that Basel Alsaleh lived in the United Arab Emirates, but they had not asked him for his address. Be that as it may, the fact is that the Council did not possess any address for the owner other than that given on the Land Registry title, and I consider that they were entitled to rely on it.
8. As the appeal site is the owner's last known place of abode, and the address formally recorded at the Land Registry, I consider that sending the copy of the notice to the appeal site address constitutes good service. Accordingly, I find that copies of the notice were served as required by s.172 of the Act, and that the appeal on ground (e) fails.

Appeals on ground (c) – that the matters alleged in the notice do not constitute a breach of planning control – appeals A, B and C

9. The onus of proof on this ground of appeal lies with the appellants, with the test being on the balance of probabilities. The appellants argue this on several fronts. One of these is that the Council has approved the developments, relying firstly on a telephone call said to have been made on 20 February 2019 with someone in the Council's planning department, who are said to have said that "there was no issue with the job". The Council says that there is no record of that conversation. Even if it had taken place, it cannot bind the Council, nor can it alter the question as to whether a development constitutes a breach of planning control.
10. The appellants also rely on an email dated 30 January 2020, which in summary says that provided that permitted development rights are intact, then any structure which meets the criteria is considered to be permitted development. This statement does no more than explain the law and does not confirm whether or not any specific development requires planning permission; the email makes it clear that it is the developer's responsibility to ensure that any development complies with the permitted development criteria. This cannot succeed as a defence against the issue of the notice.
11. I shall look at the specifics of each of the developments enforced against in turn.

The gazebo – Appeal A

12. The gazebo is constructed of a flat, raised wooden base measuring about 3.7m by 3.7m with four substantial timber upright members at the four corners, with an eaves height of about 2.54m above ground level. The uprights are attached to horizontal beams, and curved bracing arms provide additional support. The gazebo has a solid four-sided pyramidal roof, finished in roofing felt, with a maximum height over 3m. Translucent panels had been added to the upper parts of the gazebo adjacent the southern boundary but these had been removed at the time of my visit.
13. The appellant also argues that the structure is not a significant development that needs planning permission. Section 55(1) of the Act defines development as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The Courts have examined what constitutes a building operation indicating that three factors - size, permanence

- and degree of physical attachment - were relevant in deciding what was a building or structure.
14. Dealing firstly with size, at over 13.5 sq. m. in area, and with a height of over 3m, the gazebo is a significant structure. Whilst the construction gives it a lightweight feel, the solid pyramidal roof is substantial. It is of solid wooden construction and is of a size and nature to qualify as a building.
 15. In terms of permanence, the structure is not designed to be moved, and there is no indication that it is intended to be a temporary structure. This also adds weight to it being classed as a building. Lastly, in terms of affixation, I have no information about any foundations, but the gazebo is attached to the wooden base, and the combined weight of the base and gazebo is substantial and even if there are no other means of affixation, there is a considerable degree of attachment by virtue of its own weight. Taking all of these factors into account, I find that the gazebo is a building, amounting to operational development. By virtue of Section 57, planning permission is required for all development of land.
 16. That the gazebo is sold for domestic use by Costco is not indicative that planning permission is not required. The appellant has referred me to the Costco website for the gazebo, which includes detailed information about the gazebo, which specifically indicates that local building permits¹ may be required.
 17. The appellant also argues that the gazebo complies with the criteria of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. If this is the case, then planning permission would be deemed to be granted under the Order.
 18. However, one of the criteria of this part of the Order (E.1(e)) provides that development is not permitted if (e) the height of the building, enclosure or container would exceed -
 - (i) 4 metres in the case of a building with a dual-pitched roof,
 - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
 - (iii) 3 metres in any other case.
 19. The gazebo exceeds 2.5m in height within 2m of the boundary and thus is not permitted by the Order. The appeal in relation to the gazebo therefore fails on ground (c).

The extension – Appeals B and C

20. The arguments that the development is not significant are also put forward in respect of this structure, and I shall apply the same tests of size, permanence and affixation to which I have referred above. In terms of size, the structure infills a part of the garden at a lower level than that of the main house. It is longer than the side elevation of the large detached house to which it is attached, and its width provides a good sized room, with more than adequate headspace. It is larger than many domestic garages, which would

¹ The gazebo is made by a Canadian firm, and thus references to building permits can reasonably be construed in the English context as a reference to planning permission.

unequivocally be recognised as “buildings”. I therefore consider that it is of a size which could readily be defined as “a building”.

21. In terms of permanence, there is nothing in its design or method of construction, or in anything that the appellants have said about their intentions for the use of the structure, which suggests that it is anything other than a permanent one.
22. In terms of its affixation, the structure has been adapted from fence panels and a retaining wall alongside a path. The wall is a solid structure with foundations to which the fence posts have been bolted. A beam has been affixed to the top of the fence posts and joist hangers have been nailed to it and the joists. Timber walls have been provided to enclose it on all of the other sides, together with internal walls to sub-divided the structure, creating a shower room and store. A wooden floor has been provided. A Perspex roof has been affixed to the joists. I could not ascertain whether there is any other affixation to the ground, but in any event, because of the large size of the structure, it is affixed by its own weight. I therefore find that it has a degree of affixation sufficient to amount to a building operation.
23. Taking all the circumstances into account, I find that the structure, by virtue of a combination of size, permanence and degree of affixation, is, as a matter of fact and degree, a building operation within the meaning of section 55 of the Act, and thus constitutes an act of operational development. Section 57 of the Act says that planning permission is required for any development of land, subject to specified exceptions, none of which applies here.
24. The appellants assert that the structures comply with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015. If this is the case, then planning permission would be deemed to be granted under the Order.
25. Class A of part 1 of Schedule 2 of the Order permits the enlargement, improvement or other alteration of a dwellinghouse. However, paragraph A.1 of that Class says that development is not permitted in a number of circumstances, one of which (A.1(e)) is if the enlarged part of the dwellinghouse would extend beyond a wall which—
 - (i) forms the principal elevation of the original dwellinghouse; or
 - (ii) fronts a highway and forms a side elevation of the original dwellinghouse
26. The principal elevation of the original dwellinghouse is the one containing the front door, and the extension projects well beyond it. There are other criteria in paragraph A.1 which are also breached, but it is not necessary for me to recite these, as the development is clearly not permitted by virtue of paragraph A.1(e).
27. Even if the development were to be considered as an outbuilding under Class E, paragraph E.1(c) says that development is not permitted if any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. Accordingly, the development is not permitted under either Class A or Class E of Part 1 of Schedule 2 of the Order.

28. The appellants have not argued any other reason why the development does not constitute a breach of planning control, and none is obvious to me. Accordingly, the appeals on ground (c) fail.

Other matters

29. The appellants and a local resident have raised matters which are only relevant to the planning merits of the developments. As there are no deemed planning applications through an appeal under ground (a), the planning merits of the developments cannot be taken into account.

Conclusions

30. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices.

JP Roberts

INSPECTOR