



Appeal Decision

Site visit made on 2 October 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Appeal Ref: APP/N4720/C/20/3246085

2 Red Lodge Close, Roundhay, Leeds LS8 3ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Aram Zeki against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 16 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding extending beyond a wall which forms the principal elevation of the original dwellinghouse, contrary to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1 Class E.
- The requirements of the notice are to remove the outbuilding completely from the property and make good the front garden area.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. For the avoidance of doubt, the planning merits of the proposal, such as the need for the structure, limited options for its re-location, its impact on the area and other similar types of development in the vicinity, are not matters for me to consider in the context of an appeal on 'legal' grounds under section 174 of the 1990 Act as amended. Similarly, allegations about the motivation and conduct of Council officers are not relevant. My decision rests on the facts of the case, and on relevant planning law and judicial authority. In this type of appeal the burden of proof lies with the appellant, with the relevant test being on the balance of probabilities.

The appeal on ground (c)

2. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant explains that he was advised by the Council that he did not need planning permission to erect a shed in the front garden. However, this advice is not binding. It is a fundamental principle that a Local Planning Authority may not fetter its discretion to issue an enforcement notice by any form of agreement¹.

¹ *R v E Sussex CC ex parte Reprotech (Pebsham) Ltd* [2002] UKHL 8.

3. Irrespective of what may have been advised previously, the Council considers that the garage would not fall within development permitted under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This concerns the provision of a building within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse. Development is not permitted under E.1(c) if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
4. Principal elevation has a meaning set out as follows – “in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation”².
5. The appeal site comprises a semi-detached house and garden located on a corner plot at the junction of Red Lodge Close and Fearnville Road. The shed is sited within the garden between the house and Red Lodge Close. The Red Lodge Close facing elevation contains the main architectural features of the house, including the bay window, and sets the postcode. Also, the pedestrian entrance is from Red Lodge Close. I accept that the Fearnville Road facing elevation contains the main entrance to the house, but this is clearly the gable end of the property as opposed to the principal elevation.
6. In comparing the Red Lodge Close and Fearnville Road elevations, as a matter of fact and degree, I find that the former is characterised as the principal elevation due to its design and relationship with the highway. Consequently, the shed is situated on land forward of a wall forming the principal elevation of the original dwellinghouse and would not be permitted development under Schedule 2, Part 1, Class E of the GPDO. In the absence of express planning permission, the matters alleged constitute a breach of planning control and the appeal on ground (c) must fail.

The appeal on ground (d)

7. To succeed in an appeal on ground (d), the appellant must show on the balance of probability that the shed was substantially completed four years or more prior to the issue of the notice, such that it is too late for the Council to take enforcement action. The relevant date is 16 January 2016.
8. The appellant claims that he purchased and erected the shed in 2012/13. Supporting evidence includes letters from GA Ahmed dated 29 January 2020, D Zeki dated 30 January 2020 and Roza Construction Ltd dated 23 January 2020, which all state that the shed has been in situ since 2012. However, this evidence is not formally signed and witnessed. It cannot be considered as sworn evidence, which limits the weight I can attach to the statements.

² The Technical Guidance: Permitted development rights for householders published by the Department for Communities and Local Government (September 2019).

9. In addition, the appellant has submitted an image from social media showing the shed with an embedded date of date of "24 January at 11.11" and an additional date "Sunny day 24/01/2013". A further image has been provided, also showing the shed, which is annotated "Home 21 March 2014". Where full dates are provided on the photographic evidence, these are not integrated within the specific social media post. Again, this limits the weight I can attach to this evidence.
10. The Council has submitted contradictory evidence in the form of aerial images obtained from 'Google Earth' and 'Google Earth Pro'. The image with an embedded date of 19 April 2018 shows the unauthorised building in situ. In earlier images, with embedded dates of 29 September 2011, 10 June 2015 and 5 June 2016 the building is absent. This strongly suggests the shed was not present on the land on those dates.
11. The appellant argues that images from Google are not reliable as there are no witnesses or legal documents to support the dates recorded. Nonetheless, the images are clear and the dates are embedded within the images themselves noting the exact date, time and location they were taken. There is no reason for me to doubt the validity of this evidence. In contrast, only one of the appellant's social media posts has an embedded date, and this does not include the year.
12. Overall, I conclude that the appellant has failed to show that the matters alleged were substantially completed four or more years prior to the issue of the notice. Therefore, the appeal on ground (d) must fail.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision

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

Debbie Moore

Inspector