
Appeal Decision

Site visit made on 5 May 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/J4423/C/21/3270434

Land at the rear of 254 and 254A and The Barn, High Greave, Sheffield, S5 9GR

- 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 Mrs Janet Jaques against an enforcement notice issued by Sheffield City Council.
 - The enforcement notice was issued on 12 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the Land to its use for purposes incidental to the adjacent residential property 254A High Greave and the erection of a timber building that facilitates and is integral to that use of the Land.
 - The requirements of the notice are: (i) cease the use of the Land for purposes incidental to the adjacent residential property; (ii) demolish the timber building, decked area, walkway and stairs and remove the material resulting from the demolition from the land; (iii) restore the Land to its previous condition before it was used for purposes incidental to the adjacent residential property.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by:-

- i. replacing the breach of planning control with "Without planning permission, the erection of a timber building and raised timber decking for domestic use".
- ii. replacing "ten" with "four" in the first reason for issuing the notice.

Subject to these corrections, the appeal is allowed and the enforcement notice is quashed.

Background

2. The appeal site is a small part of a large field to the rear of the appellant's dwelling. The appellant states that the timber building in question was constructed in 2014. In June 2015, the appellant applied retrospectively for planning permission for (in brief) 'retention of temporary large shed and decking'. This application (LPA ref: 15/02654/FUL) was refused by the Council in April 2020. I have seen no explanation as to why the determination took almost 5 years. A subsequent appeal against this refusal was dismissed in

January 2021 (PINS ref: APP/J4423/W/20/3260728). The present enforcement notice was then issued on 12 February 2021.

The enforcement notice

3. The allegation in the notice is of a material change of use for purposes incidental to a residential use, indicating that the erection of the timber building facilitates, and is integral to, that use. The Council relies on *Murfitt*¹, *Somak Travel*², *Perkins*³ and *Kestrel Hydro*⁴ for its approach requiring the removal of operational development, which has been in place for more than 4 years prior to the issue of the notice, to restore the land to its condition before the breach took place. In those cases, it was held that an enforcement notice may require that works carried out to facilitate the material change of use are removed.
4. There are two limbs to 'development', the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. I note that in S.336(1) of The Act "use", in relation to land, does not include the use of land for the carrying out of any building or other operations on it. It was held by Lord Denning in *Parkes*⁵ that operational development 'comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself, whereas ... 'use' comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land.'
5. Waller LJ sought to clarify this difference in *Murfitt* in opining that a breach subject to the 'four year rule' is one where "something is done that, on the whole, would be obvious – that, on the whole, would be permanent by the mere fact that it is done and, therefore something that should be dealt with within a period of four years." He contrasted this with the case before him in which the works were for an ancillary purpose, which would leave the land in a useless condition for any purpose, and so the land should be restored to the condition it was before the unauthorised development took place.
6. In *Kestrel Hydro* it was made it clear that each case is fact dependent and that the 'Murfitt principle' does not embrace operational development of a nature and scale exceeding that which is truly integral to a material change of use. It should not be used to override the regime of different time limits for different development in section 171B(1), (2) and (3) of the Act.
7. In the present case, the development carried out appears to me to comprise building operations which have resulted in a very noticeable and permanent physical alteration to the land. The boundary of the land defined in the enforcement notice is very tightly drawn around the building and decking – there is no other land to which the operational development might be considered ancillary. To my mind, the development is not incidental to a material change of use – it is a large and prominent development in its own right, designed for domestic use. It is easily visible not only from neighbouring dwellings but from High Greave, the A6135.

¹ *Murfitt v SSE and E.Cambridgeshire DC* [1980] 40 P&CR 254

² *Somak Travel v SSE & Brent LBC* [1987] JPL 630

³ *Perkins v SSE & Rother Valley DC* [1981]

⁴ *Kestrel Hydro v SSCLG* [2016] COA

⁵ *Parkes v SSE* [1979] 1 All ER 21172

8. For the above reasons, I shall correct the allegation in the notice to reflect its status as operational development. I am satisfied that this would not give rise to any injustice to any party. The parties have addressed this matter in their cases and have been given the opportunity to comment on the proposed correction. As indicated in para.2 above, the Council has been aware of the development for many years.

The appeal on ground (d)

9. The Council has not contested the history of the development set out by the appellant. The planning application made in 2015 was for the retention of both the shed and the decking. The previous Inspector noted in his 2021 decision letter that 'the building and decking subject of this appeal are in situ' and that 'the development has been in situ for several years'. However, as this was an appeal under S78 of The Act, the possible lawfulness of the development was not a matter before him. Equally, the planning merits of the development are not matters which I can take into account in an appeal on ground (d).
10. As the development in question had been substantially complete for more than four years prior to the issue of the enforcement notice on 12 February 2021, no enforcement action could be taken against the development. Therefore, the appeal on ground (d) succeeds and I shall quash the notice.
11. There is no need for me to go on to consider the appeal on ground (g).

B.S.Rogers

Inspector