
Appeal Decisions

Site visit made on 21 June 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal A Ref: APP/C1625/C/21/3271371

Appeal B Ref: APP/C1625/C/21/3271372

The Wad, Damery Lane, Woodford, Berkeley, Gloucestershire GL13 9JR

- 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 Brian Cullen (Appeal A) and Mrs Sally Cullen Bond (Appeal B) against an enforcement notice issued by Stroud District Council.
- The enforcement notice was issued on 16 February 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey outbuilding within the curtilage of the property, adjacent to the principal property addressed at (2) above, shown edged in blue on the attached plan and deemed to be an annexe provision to the principal dwelling existing on the land.
- The requirements of the notice are 1) Demolish the unauthorised outbuilding edged in blue on the accompanying plan; 2) Remove all resultant materials from the land; Restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

The Notice

1. The enforcement notice states the postcode for the property as 'GL13 9JRF', which is plainly a typographical error. It would appear that the correct postcode is 'GL13 9JR' and I shall correct the notice accordingly. The notice also refers to the position of the outbuilding as being 'edged in blue' on the accompanying plan but the plan attached to the notice does not reflect this. I shall therefore substitute a plan showing the blue edging as described. Neither of these minor amendments would result in any injustice to either party.

The appeal on ground (f)

2. This ground of appeal is that the requirements of the notice exceed what is necessary.
3. Section 173 of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of

- planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach.
4. Since the requirements of the notice necessitate removal of the building and restoration of the land to its previous condition, I find that the purpose of the notice is to remedy the breach of planning control.
 5. Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse, subject to various conditions and limitations contained within that class.
 6. The appellant submits that, save as to its height, the building complies with all of the conditions and limitations contained within Class E. The appellant therefore submits that the requirements exceed what is necessary as the building could be modified to reduce its height so that it conforms to the Class E height restriction. The appellant refers to a design prepared by a structural engineer to enable this to be done, and I note that a colleague inspector in a previous appeal decision commented on the benefits of reducing the height from a visual perspective¹.
 7. However, Class E only permits a building for a purpose incidental to the enjoyment of the dwelling house and so does not allow for ancillary annexe type accommodation, which is a primary residential use. Further, the GPDO does not grant retrospective planning permission. As such, a building is only permitted by the GPDO if it met with the height limitations under Class E when it was constructed. If it exceeded those limits, it will not be permitted under the GPDO if and when it is altered later. There is then no alternative proposal before me which would remedy the breach of planning control at less cost and inconvenience.
 8. I find then that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control, and the appeal on ground (f) should therefore fail.
 9. However, I am conscious that, in view of the current pandemic, the appellant may face difficulties in seeking a builder with availability to undertake the demolition works stipulated in the requirements within a 6 month period. As such, I shall use my powers under s176(1) of the 1990 Act to vary the notice to give a compliance period of 9 months. I consider this reasonable in the circumstances outlined and I do not consider that such a minor extension would result in any injustice.

Conclusion

10. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control. However, the period for compliance with the notice falls short of what is reasonable. I shall in this regard vary the enforcement notice prior to upholding it. The appeal on ground (f) though fails as outlined.

¹ Ref: APP/C1625/D/20/3252920

Formal Decision

11. It is directed that the enforcement notice is varied by:

- the deletion of '6 months' and the substitution of '9 months' as the period for compliance in paragraph 6 of the notice.

12. It is directed that the enforcement notice corrected by:

- the deletion of the wording 'GL13 9JRF' and substitution of 'GL13 9JR' in paragraph 2 of the notice; and
- The substitution of the plan attached to this decision for that attached to the notice.

13. Subject to the variation and corrections, the enforcement notice is upheld.

V Bond
INSPECTOR



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated:

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: The Wad, Damery Lane, Woodford, Berkeley, Gloucestershire GL13 9JR

References: APP/C1625/C/21/3271371 and APP/C1625/C/21/3271372

Scale: Not to scale

