



Appeal Decisions

Site visit made on 13 July 2021

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

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

Appeal A Ref: APP/R5510/C/21/3270239

298 Cowley Road, Uxbridge UB8 2NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Deal2Build against an enforcement notice issued by London Borough of Hillingdon.
- The notice, numbered HS/ENF/018078(B), was issued on 9 February 2021.
- The breach of planning control as alleged in the notice is:
The material change of use of the land at 298 Cowley Road, Uxbridge UB8 2NJ for the storage of construction equipment comprising mainly of diggers, dump trucks and waste.
- The requirements of the notice are to:
 - (i) *Cease the use of the land for the purposes of commercial open air storage.*
 - (ii) *Remove all dump trucks, diggers and other operational commercial vehicles from the land.*
 - (iii) *Remove from the land all waste materials being stored or left on land which are not associated with the use of the land for residential purposes.*
 - (iv) *Remove all advertisement signage on the property relating to the commercial use of the land.*
 - (v) *Remove from the land all other debris, waste, building materials, plant equipment and machinery resulting from the works carried out in compliance with (i) to (iv) above.*
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended

Appeal B Ref: APP/R5510/C/21/3271177

298 Cowley Road, Uxbridge UB8 2NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Deal2Build against an enforcement notice issued by London Borough of Hillingdon.
 - The notice, numbered HS/ENF/018078(A), was issued on 9 February 2021.
 - The breach of planning control as alleged in the notice is:
The development of a single storey rear extension and the erection of a shed.
 - The requirements of the notice are to:
 - (i) *Demolish the single storey rear extension shown hatched and blue on the attached plan.*
 - (ii) *Demolish the shed shown hatched in purple on the attached plan.*
 - (iii) *Remove from the land all debris, waste, building materials, plant equipment and machinery resulting from the works carried out in compliance with (i) and (ii) above.*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of the words "commercial open air storage" and the substitution of the words "storage of construction equipment" in requirement (i) and the deletion of the word "commercial" and the substitution of the word "construction" in requirement (ii).
2. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

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

Preliminary Matters

4. The notice subject of Appeal A alleges a specific commercial use of the premises, that of the storage of construction equipment, comprising mainly of diggers, dump trucks and waste. However requirement (i) goes beyond the matter alleged to constitute the breach, seeking to ensure that all open air storage ceases. Similarly, requirement (ii) seeks the removal of all operational commercial vehicles rather than just construction vehicles. I have a duty to get the notice in order if I can do so without prejudice to the appellant and the local planning authority. I shall therefore use my power under s.176(1) of the 1990 Act to vary the notice to bring the requirements in line with the allegation. No one would be prejudiced by my doing so.

Main Issue

5. On both appeals the main issue is whether the matters alleged in the notice constitute a breach of planning control.

Reasons

Appeals on ground (c) – that the matters alleged in the notice do not constitute a breach of planning control

6. Section 57 of the Act provides that planning permission is required, subject to certain exceptions which do not apply here, for the carrying out of development. Development is defined in Section 55 of the Act as 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. Section 58 explains the various ways in which planning permission can be granted, but the appellant does not argue that planning permission has been granted, either expressly or under a development order.

Appeal A – the use notice

7. In respect of the notice subject of Appeal A, there is no dispute that the lawful use of the appeal site is as a dwelling house. The use of a dwelling house for the matters alleged in the notice, use for the storage of construction equipment comprising mainly of diggers, dump trucks and waste has a materially different character from the use as a dwelling house. It has an obviously commercial nature and appearance and it would not be a use which would reasonably be

expected to be carried out on residential premises. I therefore consider that the use amounts to development.

8. The appellant does not claim that the use is authorised either by an express planning permission, or by a deemed planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015. I therefore consider that it is a use which constitutes development, and in the absence of any permission being granted for it, the use is unlawful, and amounts to a breach of planning control.
9. The appellant's grounds of appeal rest on the premise that the use ceased after the issue of the notice, and that the requirements of the notice had been complied with. However, the test is whether there had been a breach of planning control prior to the issue of the notice. This has not been contested, and thus the appeals on ground (c) fail.

Appeal B – the operational development notice

10. Similar legislative provisions apply in respect of the extension and shed. On the basis of the photographs submitted in connection with the appeal, I am satisfied that the buildings amount to a building operation which constitutes development. No express planning permission has been granted for them.
11. By the time of my visit, most of the rear extension and the whole of the shed had been demolished (albeit replaced by another one on another part of the site). However, I am satisfied that on the basis of the submitted photographs and the undisputed contentions of the Council that the extension is not permitted development under Article 3 and Classes A and E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, because it falls within one of the provisions of paragraph A.1 of Class A, which says (at A.1(f), that development is not permitted, if, amongst other things that do not apply here, the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4 metres. The Council's uncontested evidence is that the extension projected more than 4m from the rear wall of the original dwellinghouse.
12. Furthermore it also conflicts with the conditions of paragraph A.3, which requires that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The extension was finished in timber and translucent panels, whereas the original dwellinghouse is finished in brick.
13. In the case of the shed, it falls within the class of development which paragraph E.1(e)(ii) of Class E says is not permitted, where the height of the building, enclosure or container would exceed 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse. The shed was over 2.5m in height within 2 metres of the boundary and is therefore not permitted.
14. The appellant has not suggested that the buildings are permitted development, and I see no reason to conclude that they are. Thus, in conclusion on Appeal B, I find that the buildings amount to development, for which neither specific nor deemed planning permission has been granted, and therefore they amount

to development in breach of planning control. Accordingly, the appeal on ground (c) fails.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices, subject to variation in the case of Appeal A.

JP Roberts

INSPECTOR

