The Planning Inspectorate

Appeal Decisions

Site visit made on 25 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal A Ref: APP/J0350/C/21/3272428
Appeal B Ref: APP/J0350/C/21/3272429
Land at 161 Tamar Way, Slough SL3 8SZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Ravinder Kaur (Appeal A) and Mr Jagjit Singh Sandhu (Appeal B) against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, erection of an outbuilding.
- The requirements of the notice are: (i) Demolish the outbuilding in its entirety; (ii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirement.
- The period for compliance with the requirements is: (i) Six months after the notice take *(sic)* effect.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. At s173(1)(b), the Act provides that an enforcement notice shall state the relevant paragraph of s171A(1) within which, in the opinion of the Council, the alleged breach of planning control falls. Paragraph (a) is appropriate where the breach consists of carrying out development without the required planning permission. Paragraph (b) is relevant where the breach is a failure to comply with a condition or limitation of a planning permission. As the allegation is the erection of an outbuilding without planning permission, the reference to s171A(1) paragraph (b) in paragraph 1 of the notice is in error. However, I am satisfied that, using the power available under s176(1)(a) of the Act, the notice can be corrected to refer to paragraph (a) without causing injustice.

2. The period for compliance with the requirement at paragraph 5 (i) of the notice is specified in paragraph 6 (i). No equivalent period for compliance is specified in respect of the requirement at paragraph 5 (ii). Given that a period for compliance is specified in relation to at least part of the requirements, s173(9) of the Act is complied with. Therefore, the notice is not a nullity. However, I do not intend to vary the notice to specify a compliance period in respect of the paragraph 5 (ii) requirement. This would cause injustice, as the appellants

would then be in a worse position than if they had not made appeals and had instead complied with the notice as issued.

3. As neither of the appeals were made on ground (a), there is no deemed planning application in respect of the outbuilding. Consequently, planning merits considerations are not before me.

Appeals A and B-Ground (c) appeals

4. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. It is for the appellants to show that their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.

5. The appeal site contains a mid-terrace dwelling. The front elevation faces towards a public open space, whilst a communal service road runs at the rear. The outbuilding in these appeals has been erected across the end part of the rear garden, adjacent to the service road. The outbuilding is in the course of construction and has unfinished masonry walls with a flat roof. There is a garage style door opening together with a pedestrian doorway in the service road elevation. There is another pedestrian doorway together with two window openings in the elevation facing towards the rear elevation of the dwelling. A flat roof canopy runs across the elevation facing the rear of the dwelling. At the time of my visit, the interior of the outbuilding contained building materials and equipment.

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 1, Class E permits the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool which is required for a purpose incidental to the enjoyment of the dwelling as such, subject also to, amongst other matters, the relevant limitations on the size, height and location of such structures in paragraph E.1 not being exceeded.

7. According to the Courts, when assessing whether a building is required for a purpose incidental to the enjoyment of the dwelling, 'required' should be interpreted as 'reasonably required' and should not rest on the unrestrained whim of a householder. Consequently, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.

8. In the context of a dwelling, an incidental use would generally be regarded as a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it but would not include use as primary living accommodation. It is mainly for the occupiers of a dwelling to determine what incidental purposes they propose to enjoy, subject to a test of reasonableness. The Government's Technical Guidance[1] advises that structures falling within Class E can include common buildings such as garden sheds, other storage buildings, garages and garden decking as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling.

[1] Permitted development rights for householders Technical Guidance: MHCLG September 2019.

9. The intended use of the outbuilding is described as a garage. Nevertheless, at around 4.4 m its internal depth is relatively limited. The internal depth is well below the 5 m minimum requirement for a garage, set out in the Council's Residential Extension Guidelines Supplementary Planning Document[2]. As a result, I have reservations over whether a vehicle could physically be accommodated. Also, given the relatively limited width of the carriageway in front of the outbuilding, I am not convinced that entering and egressing the garage with a vehicle is likely to be a straightforward affair, especially if vehicles were parked nearby on the service road. Garages erected at adjacent residential properties have been set back deeper into rear gardens further from the service road, probably in part to facilitate the ease of manoeuvring by vehicles. These factors reinforce my doubts over whether the outbuilding has a practical utility as a garage.

10. Additionally, the outbuilding is considerably wider than the garage door opening. This means that the outbuilding has an overall internal floor area which is significantly in excess of that which is likely to be reasonably necessary if the sole intended purpose is in fact to accommodate a vehicle. Whilst part of the outbuilding would also seem to be intended for use as a covered thoroughfare leading to the dwelling, the appellants did not explain any intended purpose for which the outbuilding would be used, other than as a garage.

11. Given the above factors, I am not persuaded that the outbuilding is genuinely and reasonably required for a purpose or purposes which are incidental to the enjoyment of the dwelling. The appellants have not advanced any meaningful evidence which might have led me towards a different conclusion.

12. The outbuilding does not exceed the relevant size and locational limitations in Class E at paragraph E.1 (b)-(d). Even so, the outbuilding is within 2 m of the site boundaries and the highest part of the roof is around 2.6 m above ground level. Therefore, the outbuilding exceeds the 2.5 m limitations on the overall height and the height of the eaves, at paragraph E.1 (e) (ii) and paragraph (f) respectively. The GPDO does not provide any margin for deviation; either a development falls within the relevant limitations or it does not, in which case planning permission is not granted. Where a limitation in the GPDO is exceeded the whole development is unlawful, not just the element in excess of the permitted limit.

13. As there is no express grant of planning permission in respect of the outbuilding, it is unauthorised. Although an application for planning permission was submitted, I am given to understand that it was refused by the Council on 2 February 2021[3].

14. Therefore, the outbuilding is in breach of planning control; the appellants have been unable to show otherwise and the ground (c) appeals fail.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

[2] Guideline EX41, page 27.
[3] Council Ref: P/19127/000.

Formal Decision

16. It is directed that the enforcement notice is corrected by deleting "paragraph (b)" in paragraph 1 and substituting it with "paragraph (a)". Subject to the correction the appeals are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR