



Appeal Decisions

Site visit made on 21 July 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal A: APP/Q4625/C/21/3272832

Appeal B: APP/Q4625/C/21/3272833

84 Hurdis Road, Shirley, Solihull, West Midlands B90 2DW

- 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 Jayne Williams (Appeal A) and Mr Carl Williams (Appeal B) against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The enforcement notice was issued on 9 April 2021.
 - The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised operational development consisting of the construction of a ground floor single storey side extension to the southern corner of the front of the property (initially comprising an outbuilding, subsequently linked to the main dwelling house to form one continuous extension) adjoining Hurdis Road, in the approximate position shown marked blue on the attached plan.*
 - The requirements of the notice are (i) *Demolish in its entirety, ground floor single storey side extension to the southern corner of the front of the property adjoining Hurdis Road, in the approximate position shown marked blue on the attached plan; and* (ii) *Remove all materials arising from Step (i) above from the land.*
 - The period for compliance with the requirements is 6 (six) months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. Matters relating to the planning merits of the structure in the context of the street scene or the effect of the development on occupants of neighbouring properties are not relevant to an appeal made on ground (c). Those arguments are more relevant as to whether planning permission should be granted. However, no appeal is made on ground (a) that planning permission should be granted, and so I cannot take them into account in reaching my decision.

The appeals on ground (c)

1. This legal ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellants, and the test of the evidence is on the balance of probability.
2. A breach of planning control comprises the carrying out of development without the required planning permission. Section 55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) defines development as the

carrying out of building, engineering, mining or other operations in, on, over or under land. Section 336 of the 1990 Act defines a “building” as including “any structure or erection” and this would include both the erection of a storage building or shed, along with the erection of any additional structure linking it to the existing dwellinghouse.

3. The development, which is the subject of the notice, is the single storey extension to the south of the dwellinghouse, as indicated on the enforcement notice plan. At my site visit, I saw that this comprised a storage building with a pitched roof and a connecting structure, with a flat roof. It appears that the storage building was constructed first as a stand-alone building to the side of the house. This was subsequently physically attached to the house by a side extension to the property.
4. The section which connects the storage building provides additional living accommodation within the house, whereas the storage building has no internal link to the house, it can only be accessed from the driveway. Nevertheless, because the storage building has been physically joined to the main dwellinghouse it, along with the part that connects it to the dwellinghouse, forms an extension or addition to the property. The description of the alleged unauthorised operational development in the notice is sufficient therefore to encompass both the erection of the storage building and the extension which links the building.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains. Schedule 2, Part 1, Class A of the GPDO grants permission for development within the curtilage of a dwellinghouse, subject to specified conditions and limitations.
6. Within section (e) of Class A, development is not permitted if:
the enlarged part of the dwellinghouse would extend beyond a wall which—
(i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse.
7. The extension is caught by both of these limitations. Positioned at an angle to the dwellinghouse, the development extends forward and beyond the principal elevation. Furthermore, the development extends beyond the side elevation which fronts the highway.
8. Even if the storage building was not linked to the dwellinghouse, it would require express planning permission. This is because Schedule 2, Part 1, Class E¹ of the GPDO similarly provides that development is not permitted if:
(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

¹ 1. The provision within the curtilage of the dwellinghouse of - (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

9. To conclude on this ground of appeal, the erection of a storage building and the structure linking it to the dwellinghouse to form an extension is development that does not benefit from a planning permission granted by the GDPO. Since no planning permission exists for the development, it constitutes a breach of planning control.
10. The appeals on ground (c) therefore fail.

S A Hanson

INSPECTOR