
Appeal Decision

Site visit made on 6 September 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2021

Appeal Ref: APP/W3330/C/21/3274169

45 Northgate, Wiveliscombe, Taunton, TA4 2LF

- 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 Miss Leah Kramer against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered E/006/49/20, was issued on 29 March 2021.
 - The breach of planning control as alleged in the notice is the erection of two outbuildings on the land in the approximate positions outlined in blue on the plan attached to the notice.
 - The requirements of the notice are:
 - 1 Remove the outbuildings from the land
 - 2 Remove from the land all materials resulting from the removal of the outbuildings.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice:

- i) be corrected by the deletion of the words 'the erection of two outbuildings on the land in the approximate positions outlined in blue on the plan attached to the notice' and their replacement with the words 'the erection of an outbuilding used as a bike store situated adjacent to the boundary with No 44 Northgate';
- ii) and varied by the deletion of the words 'outbuildings' in steps 1 and 2 of the notice and their replacement with the word 'outbuilding'.

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

- 2. Although nobody appeared to be at the site at the time of my site visit, I was able to view the two outbuildings the subject of the allegation from the front garden and road.
- 3. An enforcement notice requiring the reduction in height to 1 metre of an unauthorised timber fence adjacent to the highway which exceeds that height took effect on 28 September 2020. No appeal was made against the notice. At the time of my site visit, the requirements of that notice did not appear to have been complied with.

The appeal site and relevant planning history

4. The outbuildings subject to the notice are situated at the sides of the front garden of the appeal property, which is a semi-detached house in a residential area. The timber bike store is situated to the left of the entrance gate adjacent to No 44 Northgate and projects above the line of the fence. It is decorated with coloured lights. The second outbuilding is a log store situated to the right of the entrance gate and is of similar construction and at a slightly lower height than the bike store, with its roof also visible above the fence line.

The appeal on ground (c)

5. An appeal on this ground is that there has not been a breach of planning control. The appellant states that the log store is no higher than 3ft and the bike store should not be classified as a building as it is a simple roof attached to the side fence.
6. For the purposes of planning control both outbuildings represent development as defined in s55 for which planning permission is required.
7. The Town and Country Planning (General Permitted Development) (England) Order, as amended, sets out what may be constructed within the curtilage of a dwellinghouse without the need for express planning permission. Class E of Schedule 2 Part 1 of the Order does not permit outbuildings situated between the front elevation of the dwelling and the boundary fence adjacent to the public highway.
8. The outbuildings do not benefit from any permission and the appeal on this ground fails.

The appeal on ground (d)

9. An appeal on this ground is that it is too late to take enforcement action. The appellant claims that the log store is over 6 years old, being constructed in July 2015 although no representations are made in respect of the age of the bike store.
10. Frank Blaker Building Services confirm in an email dated 30 April 2021 that he assisted in the construction of the log store in the middle part of July 2015. The occupiers of No 45 Northgate confirmed in May 2021 that the log store has been in place for at least 5 years.
11. The Council acknowledge that there was a structure in situ at the time of an officer site visit on 5 July 2019 (partially visible on the photo at Appendix B). The Council became aware of both outbuildings in February 2021 when compliance with the extant enforcement notice was being checked.
12. The Council has not provided any evidence to contradict the appellant's version of events as supported by the neighbours and Frank Blaker Building Services. I therefore conclude that the log store was constructed in excess of four years prior to the notice and has consequently achieved immunity from enforcement action through the passage of time. However no such immunity has been achieved by the bike store.
13. I note that compliance with the enforcement notice relating to the fence may make the log store more visible in the street scene but this is not a factor relevant to matters of law.

14. The appeal on this ground succeeds in respect of the log store.

The appeal on ground (f)

15. An appeal on this ground is that the steps are excessive and that lesser steps would overcome the objections.

16. The appellants believe that the lesser steps should only require the removal of the overhanging roof boarding to the bike store and that the bikes could be covered by a tarpaulin or other temporary cover. However, in the light of the success of the appeal in respect of the log store, it seems that other alternatives for the storage of bikes may exist such as by reorganising the log store to accommodate bikes.

17. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.

18. The appellant points out that the materials arising from the removal of the bike store have to be removed from the land. That is what step 2 of the notice requires but I note that the Council indicates that the material could be used in the back garden for a structure that complies with permitted development rights and invites the appellant to submit details to the Council beforehand.

19. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

Reasons

20. I conclude on the balance of probabilities that the construction of the log store took place more than 4 years prior to the issue of the enforcement notice and that the time for issue of the enforcement notice set out in section 171B(1) the 1990 Act as amended has therefore expired. Accordingly the appeal succeeds on ground (d) in respect of the log store and I shall correct the notice and vary the requirements to reflect this.

21. The appeal in respect of the bike store is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector