
Appeal Decision

Site visit made on 21 September 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 08 October 2021

Appeal Ref: APP/C3240/C/20/3258746

77 Hadley Park Road, Hadley, Telford TF1 6PS

- 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 Hassan Akhtar against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 7 August 2020.
- The breach of planning control as alleged in the notice is the erection of a free standing metal outbuilding.
- The requirements of the notice are to demolish the metal outbuilding with all materials arising being removed from the land, or alternatively reduce the height of the outbuilding so that no part of the building exceeds 2.5 metres in height when measured from ground level.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with a correction.

Procedural Matter

1. I have noted that there is a typographical error in paragraph 4 of the Notice which in line 6 refers to '*the properties corner plot*'. It is clear to me that the correct wording should be '*the property's corner plot*'. Section 176(1)(a) of the 1990 Act enables the Secretary of State at appeal to correct any defect, error or misdescription if he is satisfied that the correction will not cause injustice to the appellant or the local planning authority. The courts have supported the view that unless there is an identifiable injustice to one or more parties involved, the Secretary of State's powers of correction can be widely applied. In this case I am satisfied that this error can be corrected without causing injustice.

The appeal on ground (b)

2. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the free standing metal outbuilding as alleged had not been erected on the land. An outbuilding clearly has been erected on the land as a matter of fact and therefore the appeal on ground (b) must fail.

The appeal on ground (c)

3. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of an outbuilding comprises operational

development within the meaning of s55 of the Act for which, s57 indicates, planning permission is required. The development does not comprise permitted development for which planning permission was granted by virtue of Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO); firstly because it did not meet the height limitation for a building within 2 metres of the boundary which should not exceed 2.5 metres; and secondly because the eaves height of the building must not exceed 2.5 metres in height. Therefore, regardless of whether this is considered to be the erection of a new building or the alteration of an existing building, the height restrictions have been exceeded and the building is not permitted under Part 1 Class E of Article 3 of the GPDO. The appeal on ground (c) fails.

The appeal on ground (d)

4. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the outbuilding had been substantially completed four years before the notice was issued and therefore the material date is 7 August 2016. In support of this ground of appeal the appellant has submitted sales particulars from 1999 which provide no evidence that the existing building was in situ at that time. The details do show that the property came with a detached garage, but that is clearly the previous garage that was on site.
5. In addition, a photograph from Google Maps dated June 2016 shows the original garage in situ and it is very clear that the erection of the existing structure had not started. Finally, the Council's evidence is clear that in July, September and December 2019 Council visits confirmed that the structure was new. Therefore, in the light of the evidence before me I conclude that the appeal on ground (d) must also fail.

Conclusion

6. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

7. The enforcement notice is corrected by the deletion from line 6 of paragraph 4 of the word '*properties*' and the substitution therefore of the word '*property's*'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR