



Appeal Decisions

Site Visit made on 21 September 2021

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal A Ref: APP/M3645/C/20/3256892

Appeal B Ref: APP/M3645/C/20/3256893

Land at 41 Stoneleigh Road, Limpsfield, Surrey RH8 0TP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr James Robert Kelly and Appeal B is made by Mrs Cathryn Lisa Kelly against an enforcement notice issued by Tandridge District Council.
- The notice, numbered 17(2020), was issued on 26 June 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building in the approximate position marked with a black hatch on the attached plan A.
- The requirements of the notice are to:
 - (i) Either demolish the building in the area shown by the black hatch on Plan A and reinstate the ground level which existed prior to the works commencing or reduce the height of the building to 2.5 metres or less above the adjacent ground level;
 - (ii) Remove the material arising from compliance with 5(i) above to an authorised place of disposal.
- The period for compliance with the requirement is: 4 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. During the course of the appeal planning permission was granted on appeal for the erection of a detached garage¹. It has been suggested that the requirements of the notice could be varied to enable alterations to the existing building such that it would appear in accordance with that planning permission. I note that Inspector treated the proposed development as a new building to replace that on site, rather than retention and alteration of the existing. That planning permission was subject to a number of conditions, including a condition that required details of the materials to be used be submitted and approved prior to development commencing (pre-commencement condition). In addition, landscaping details were required within a month of the commencement of development.
2. I asked the Council and the appellant whether there would be any effect of amending the requirements of the notice on the conditions attached to the planning permission. This is because I was concerned that if I were to amend the notice to require alteration of the building to comply with that planning permission, my decision would allow that development to take place without compliance with conditions. That would mean that the conditions would be

¹ Appeal reference APP/M3645/D/20/3252341

unenforceable. The conditions were considered necessary by the previous Inspector in order to make the development acceptable in planning terms.

3. I note that I am able to vary the terms of the enforcement notice under Section 176(1)(b) of the Town and Country Planning Act 1990 (the Act), provided it would not cause injustice to the appellant or the Council. I am concerned that this variation could result in development that would be unacceptable in planning terms. The status of the planning permission and attached conditions may also be unclear in the future. Consequently, such a variation would cause injustice to the Council and the appellant. I will not vary the notice as requested.

The Appeal on Ground (c)

4. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
5. There is no dispute that the building constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been granted for a building of the size constructed. The appellant suggests that the building benefits from the planning permission granted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). There are a number of limitations to that class. The Council suggests that the building exceeds those limitations in relation to roof heights. In all other respects, the Council indicates that the building complies with Class E, Part 1, Schedule 2 of the GPDO and I see no reason to disagree with their conclusion in this regard.
6. Article 2(2) of the GPDO states that height should be measured from the highest part of the surface of the ground immediately adjacent to the building. In this case, the site has a slight slope rising up from the access. The appellant has excavated the ground such that the floor of the building and ground immediately adjacent are flat and at the same level as the access. The lowering of the ground in this location was an engineering operation carried out prior to construction of the building. When measured from that ground level, the height of the building is greater than permitted under the GPDO.
7. I note that the height of the building complies with the requirements of the GPDO when measured from the natural ground level around the building. However, the way the ground has been excavated means this is not immediately adjacent to the building.
8. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the building is above the height permitted under Class E, Part 1, Schedule 2 of the GPDO. As a result, no planning permission has been granted for the development. It thereby constitutes a breach of planning control.
9. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (g)

10. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.

11. The enforcement notice requires the roof to be reduced in height or the building to be removed within four months of the date the notice takes effect. I understand that the appellant would need to find alternative storage of the effects contained within the building. However, I consider it would be possible to find such accommodation, move the contents and complete the works required in the timescale required by the notice.
12. I note that the Council suggested the enforcement notice could be amended to allow the building to be altered in accordance with the planning permission granted at appeal. I have concluded that is not possible, but it would be reasonable to allow time for the pre-commencement condition to be discharged should the appellant decide to demolish the building prior to implementing that planning permission. As a result, a short extension to the period for compliance to six months would be reasonable to allow that to take place.
13. I accept that there may be some uncertainty as to how to access funds to carry out the works required, especially given the effect of the restrictions associated with the pandemic. However, this would not alter my conclusion relating to the period reasonably required to carry out the works.
14. For these reasons, I conclude that the appeal under ground (g) should succeed and the period specified in the notice for compliance should be extended to six months.

Formal Decision

15. It is directed that the enforcement notice is varied by:

the deletion of 4 months and the substitution of 6 months as the time for compliance.

16. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR