



Appeal Decision

Site visit made on 23 November 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/R5510/C/21/3273986 110A Cleave Avenue, Hayes UB3 4HB

- 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 Adwin Lucas against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/018054(B), was issued on 19 March 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of an outbuilding ("the breach") at 110A Cleave Avenue, Hayes UB3 4HB.*
- The requirements of the notice are to:
 - (i) Demolish and remove the outbuilding as shown in the approximate position coloured in blue on the attached plan; and
 - (ii) Remove from the land all debris, waste, building materials, fixtures and fittings, plant equipment and machinery resulting from the demolition works listed in (i) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issues

1. The main issue arising from the appeal on ground (c) is whether the outbuilding benefits from a permission conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order"). If not, then the main issues arising from the appeal on ground (a) concern the effects of the outbuilding on the character and appearance of the area and on the amount of outdoor amenity space left available to the occupiers of the host property.

Reasons

The appeal on ground (c)

2. Article 3 of the Order grants permission for development of the descriptions found in Schedule 2. Part 1, Class E of that Schedule describes the provision within the curtilage of a dwellinghouse of any building... required for a purpose incidental to the enjoyment of the dwellinghouse as such. Here, the Council does not contend that the outbuilding is not required for such a purpose.
3. Class E.1 then sets out what is not permitted, by reference to factors such as height, location and amount of coverage within the curtilage, and whether raised platforms are included. The Council say that 'in light of the above' it is

considered that the building does not benefit from permitted development rights, but they do not set out exactly why. The appellant's assessment of the percentage of the curtilage built upon is not challenged. The Council's measurements of the building however find it to be 2.93m at its highest point above natural ground level and 2.53m at its lowest point above raised ground level. The relevant threshold in the Order is 2.5m in the case of a building within 2 metres of the boundary of the curtilage of a dwellinghouse.

4. Here, the outbuilding is built against the boundaries of the curtilage and I observed at my site visit that it appeared to slightly exceed 2.5m in height. Therefore the tolerances of the Order are not met and as a result it is not permitted development. Therefore, the appeal on ground (c) does not succeed.

The appeal on ground (a)

5. Relevant planning policies (BE1, DMHB11 and 14, DMH6 and DMHD2) require design of high standards and the maintenance of local character and landscaping features. The development here is towards the end of a cul-de-sac where the backs of the properties on Cleave Avenue face onto the fronts of the properties behind them. A set of garages forms the end of the cul-de-sac. The outbuilding is of a generally similar appearance to the rear garages that surround it, but with some differences. It is slightly taller and wider than the other garages, it has a small window to the rear, and the white plastic double doors are situated too far from the ground for it to be reasonably seen as a garage. I do not find the height or size of the building to be harmful, but in its physical appearance it does depart from the prevailing form of development in the area and is not in keeping with the local vernacular. I therefore find that it departs from the development plan policies BE1, DMHB11 and DMHD2 in this respect.
6. Combined with an extension to the rear of the house, the outbuilding occupies a substantial part of the curtilage of the house. At my site visit I saw that the remaining open rear garden area was in use for drying washing, and a small area of sitting out space has been retained. The relevant planning policies here require outbuildings to be proportionate to the size of their host dwellings, and seek to prevent the loss of gardens due to the need to maintain local character, amenity space and biodiversity. Although of a relatively substantial size, I do not find the outbuilding to be unduly disproportionate or to result in the loss of an unacceptable degree of private amenity space to the host dwelling.
7. The appellant contends, in an assertion not challenged by the Council, that if required to demolish the present outbuilding he will proceed to rebuild it so as to comply with the permission conferred by the Order, which would result in a building of only marginally different dimensions. In the light of this assertion I agree that the relevant fall-back position is a material consideration to be taken into account. Subject to the relevant tolerances, the Order does not provide for control over the design or materials of Class E outbuildings.
8. With that in mind, I shall grant planning permission for the outbuilding. I do not find the size of the building to be harmful. Although I find there to be some harm to local character contrary to the relevant development plan policies for the area, the realistic prospect of a different, only marginally smaller and no less harmful, building being erected in its place is a material consideration of sufficient weight to indicate a decision that is not in accordance with the development plan.

9. No planning conditions have been suggested and I consider that none are required.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

11. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding at 110A Cleave Avenue, Hayes UB3 4HB.

Laura Renaudon

INSPECTOR