The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2022

Appeal Ref: APP/N3020/C/21/3279123
Bracken House Blidworth Waye, Papplewick, Nottingham NG15 8GB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Reece Phillips against an enforcement notice issued by Gedling Borough Council.
- The notice was issued on 1 July 2021.
- The breach of planning control as alleged in the notice is: *Without planning permission, the erection of an unauthorised building with associated hardstanding comprising steps and a patio in the approximate position marked on the attached plan.*
- The requirements of the notice are to: *i) Demolish the unauthorised building, including the removal of all foundations ii) Remove the patio area and steps serving the unauthorised building and restore the garden to its previous condition iii) Remove all resulting rubble and wate materials to a point of lawful disposal.*
- The period for compliance with the requirements is: Six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. An application for cost was made by Mr Reece Phillips against Gedling Borough Council. This is the subject of a separate decision.

The appeal on ground (b)

3. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The appellant must demonstrate that the matters comprising the alleged breach of planning control have not occurred and the test of the evidence is on the balance of probability

4. The appellant must therefore demonstrate that there has not been operational development on the land by the way of the erection of the building with associated hardstanding comprising steps and a patio. The burden of proof falls to the appellant to show that the matters alleged have not occurred. The planning merits of the matter alleged do not fall to be considered.

5. It was evident at my site visit and from the submitted evidence from both parties that the development as alleged has occurred. Therefore, the appeal on ground (b) fails.

The appeal on ground (c)

6. The appeal on ground (c) is a claim that the development does not constitute a breach of planning control. The burden of proof falls to the appellant, and the test of the evidence is on the balance of probability. The planning merits of the matter alleged do not fall to be considered under these grounds.

7. Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) concerns buildings within the curtilage of a dwellinghouse. E.(a) provides that the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development subject to conditions and limitations. The main area of dispute between the parties concerns whether the building would be wholly used for purposes incidental to the enjoyment of the dwellinghouse. The council consider that the building has the arrangement of a separate dwelling with the ability to afford those who use it the facilities required for day to day living.

8. E.4 says that for the purposes of Class E, "purposes incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance[1] advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house.

9. An incidental use is one which is functionally related to the primary use of the planning unit. For a building to be 'required for a purpose incidental to the enjoyment of the dwellinghouse', the appellant must simply show that it is 'reasonably required'. They do not need to somehow prove that the building would be 'necessary'. Whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwelling. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.

10. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. Moreover, the GPDO sets no requirement that any Class E building is 'subordinate' to the dwellinghouse.

11. In this case, the building is relatively large being of substantial construction and, as commented on by the council, the standard of finish is exceptionally high. It is sited within the garden of a large, detached house which sits in generous grounds that surround the house. There is a 4 bay detached garage and a detached timber-clad flat-roof building, which is used as a 'home office'

[1] Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

between the house and appeal building. I also observed a modest sized, detached 'garden room' and a further sizeable, detached timber-clad building that appeared to be newly constructed. I have no information regarding its use.

12. At the time of my site visit, the appeal building was divided into four spaces (3 rooms with one room partially subdivided). One room was occupied by various items of gym equipment, one room contained a sauna, a sun bed and sun loungers, there was also a spacious bathroom and a fitted kitchen. The building was surrounded by an expanse of patio with steps leading down towards the house. I am informed that electric, water and heating are all run from the main house with no separate feeds or meters and there is a separate septic tank, due to the distance from the house. The patio provides an area to enjoy the sun whilst using the outdoor furniture and the hot tub.

13. The appellant explains in his statutory declaration (SD) dated 27 September 2021 how the family uses the space. I am told that the appellant works long hours in his own business and likes to use the appeal building to relax and for exercise. The space, layout and facilities enable the building to function as a fully independent entertainment facility away from the main house where the appellant can entertain friends and business contacts without the need to keep returning to the main house to prepare food or drinks.

14. The gym is laid out with several small pieces of moveable equipment, all of which are consistent with home use and the circulatory space around the equipment is not excessive. The spa room too is a use which is considered incidental to the use of the dwellinghouse as a dwellinghouse. Although the bathroom and kitchen could be considered primary accommodation, such facilities seem to me as reasonable for use in association with a home gym, spa and general entertainment space. The building is relatively large, it is sited within an extensive garden and it serves a substantial family home. The standard of finish and quality of construction are not relevant to my consideration. Furthermore, there is no evidence that the building would be used for any other purposes. Indeed, the submissions consistently refer to the building as the "summer house" and include correspondence with the council, a quotation for building works[2], invoices[3], an SD[4] from the builder and a Building Regulation Certificate of Compliance[5] for electrical installations. All of which refer to the building as the summer house.

15. Given what I observed on site and the submissions provided by the appellant, I am satisfied that, on the balance of probability and as a matter of fact and degree, the building remains part of the same planning unit and the purpose of the building is incidental to the main dwelling as such. As I have found the building to be development permitted by Article 3 and Schedule 2, Part 1, Class E to the GPDO, the development does not constitute a breach of planning control.

16. The council may have concerns about the future use of the building, and I acknowledge the appellant's SD which confirms that "the Summer House has never been and will never be used for residential purposes." Notwithstanding the council's apprehension and the appellant's proffered undertaking, a

[2] KA Building Services dated 14 September 2020
[3] KA Building Services dated 30 October, 30 November, 28 February
[4] Dated 27 September 2021
[5] Address of installation – Bracken Summer House + Gym dated 9 April 2021

material change of use of the building would require planning permission and the council may take enforcement action should that eventuality occur.

17. The notice also referred to the hardstanding and steps as "associated" with the building and with a requirement for their removal. However, I note that there is no objection to them in the council's reason for issuing the notice. Notwithstanding this, I consider that this part of the development would be permitted by Article 3 and Schedule 2, Part 1, Class F to the GPDO.

18. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

S A Hanson

INSPECTOR