



Appeal Decision

Site visit made on 1 March 2022

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

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Appeal Ref: APP/R2330/C/21/3288344

2 Oakdene Avenue, Huncoat, Accrington, Lancashire BB5 6HP

- 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 Les Wheatcroft against an enforcement notice issued by Hyndburn Borough Council.
- The enforcement notice was issued on 3 November 2021.
- The breach of planning control as alleged in the notice is the erection of detached outbuilding which exceeds the allowances of Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The requirements of the notice are:
 - i. Demolish the unauthorised outbuilding.
 - ii. Remove all resultant rubble and associated materials from the site.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matter

1. It appears to me that some of the comments made by the appellant are, in essence, arguments under ground (c), that there has been no breach of planning control with respect to the allegation. Therefore, there is a hidden appeal on ground (c) which I shall deal with before considering the other grounds of appeal.

The appeal on ground (c)

2. The ground of appeal is that the breach alleged does not constitute a breach of planning control. The erection of a detached 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 way of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) because when constructed, taking account of the height of the dwarf wall on which it is constructed, it did not meet the height limitation for a building within 2 metres of the boundary which should not exceed 2.5 metres. Therefore, the appeal on ground (c) fails.

The appeal on ground (a)

3. The ground of appeal is that planning permission should be granted. The main issues are the effect on the character and appearance of the area and the living conditions of the occupants of neighbouring residential properties with particular reference to outlook.
4. The appeal site is the rear garden of an extended semi-detached residential property which is situated within a predominantly residential area of Huncoat. There are other outbuildings and structures in the rear garden area which backs onto 17 Winterley Drive. The appeal building is constructed mainly of timber walls with a part tiled and part polycarbonate roof and is built on a raised platform / small wall feature. Obscure glazed windows have been positioned in the rear elevation of the building which face Winterley Drive. The building is used for an indoor koi carp pond and associated pumps, controls and equipment.
5. At my site visit I noted that the building is large and is visually prominent from the rear of properties on Oakdene Avenue and also from Winterley Drive. It is situated particularly close to a residential property to the rear from which it appears as a dominant and visually intrusive building which is very much at odds with its immediate surroundings in terms of design, scale and the materials used. As a result of its contrast with the surroundings and overall prominence, I conclude that it is harmful to the character and appearance of the area.
6. In addition, as a result of its close proximity to other residential properties the building is visually intrusive to the extent that it harms the outlook from those properties and is harmful to living conditions in that regard. Therefore, the development conflicts with Policies ENV6 and ENV7 of the Core Strategy Adopted January 2012, Policies DM26 and DM29 of the Development Management DPD Adopted January 2018 and the National Planning Policy Framework. Among other objectives these seek to ensure that the character and quality of Hyndburn's urban and rural environments will be conserved and enhanced through high quality design, new development should retain local distinctiveness and new development will only be acceptable if it does not result in unacceptable impact through, among others, visual impact.
7. I have taken account of the appellant's comments regarding other development in the area, the relationship between his property and the neighbouring property, 17 Winterley Drive and his response to the comments raised by a neighbour, but I have determined the appeal on ground (a) on its own merits. I conclude that the development conflicts with the development plan as a whole.

The appeal on ground (f)

8. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the demolition of the unauthorised outbuilding, the purpose is clearly to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In this respect, the appeal on ground (f) fails.

9. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. The appellant has suggested that the overall height of the building could be reduced by either altering the roof or removing the structure on which it has been built and lowering the entire building into the space below. He has also stated that it would not be possible to alter the building to bring it within permitted development limitations. Even with the suggested alterations, the building would remain in close proximity to the boundary of the adjacent residential property and would be clearly visible and unduly prominent within its residential surroundings. Landscape planting may over time screen the building, but again this would not overcome my concerns regarding the proximity to the residential property to the rear. In any case these suggestions would not remedy the breach of control and the appeal on ground (f) does not succeed.

Other Matters

10. The appellant has drawn my attention to the matter of his Human Rights. Articles 1 and 8 of the Human Rights Act 1998 states that everyone has a right to respect and family life, and their home and the right of peaceful enjoyment of possessions and property, among others. These are qualified rights, whereby interference may be justified if in the public interest, but the concept of proportionality is crucial. In this particular case it is in the public interest and proportional to control the development in order to protect the character and appearance of the area and the living conditions of the occupants of nearby residential properties. Therefore, the Council's course of action is appropriate in this case.
11. The appellant is clearly dissatisfied by the way in which the Council has dealt with this case, including the advice he has been given. However, the appeal process is not one which can deal with matters relating to the Council's conduct in dealing with the appellant, but instead is a way of resolving the planning dispute between the appellant and the Council.

Formal Decision

12. The appeal is dismissed and the enforcement notice upheld.

A A Phillips

INSPECTOR