



Appeal Decisions

Site visit made on 26 April 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 May 2022

Appeal A Ref: APP/P0240/C/21/3273972

Appeal B Ref: APP/P0240/C/21/3273973

Land at the rear of 33 Newtown, Pottton SG19 2QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Jason Dickinson and Appeal B by Mrs Sarah Dickinson against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice was issued on 14 April 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey building.
 - The requirements of the notice are: Demolish the building.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (c) and (f). Since the prescribed fees have not been paid within the specified period in relation to Appeal B, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in relation to that appeal
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Decisions in Relation to Appeals A & B

1. The appeals are allowed and the enforcement notice is quashed.

Procedural Matter

2. Two appellants were named on the appeal form; Mr Jason Dickinson and Mrs Sarah Dickinson. In such cases the Planning Inspectorate assigns an appeal reference to each appellant because, in effect, two appeals have been made. Where an appeal is made on ground (a) a fee is required to be paid. It is common that the fee will only be paid in relation to one of the appeals, in this case Appeal A. Thus, Appeal B proceeds on grounds (c) and (f) alone.

Application for costs

3. An application for costs was made by Mr & Mrs Dickinson against Central Bedfordshire Council. This application is the subject of a separate Decision.

The Appeals on Ground (c)

4. The appeal site relates to land at the rear of 33 Newtown which is an end terraced property within a row of four late Victorian houses. Immediately to the side of the dwelling is a track which provides vehicular access to the rear, serving the land in question but also the rear gardens of the other three houses in the row. The gardens run broadly parallel with the associated houses, albeit set slightly to the side in a staggered arrangement.

5. The track is loosely gravelled giving it an informal appearance as it turns the corner and provides access to the various outbuildings and garages to the rear of the dwellings. The associated gardens are long but relatively slender. Given the alignment of the gardens and the boundary fences and hedges which separate them, it is readily apparent which parcel relates to which dwelling. The fences and hedges generally run from the bottom of the respective gardens and terminate at the point where the access track cuts across the back of the houses in order to allow for ease of access.
6. However, given its informal appearance and lightly trafficked nature, the track does not provide a notable physical or visual barrier between the rear of the dwellings and the associated gardens beyond. It is not comparable to a public road crossing the land which would have its own distinct function. The land across which the track crosses visibly remains part of the respective amenity space. Overall, the presence of the access does not significantly alter the close and intimate relationship between the rear of each dwelling and the gardens beyond.
7. Unlike other properties in the row the area immediately to the rear of No.33, running up to the edge of the track, has been enclosed by low fencing. That does provide more of a visual barrier between the space immediately at the back of the dwelling and the remainder of the garden which is on the other side of the track. However, the fence is low in height and there remains clear visibility between the enclosed space and the land beyond where the building has been erected.
8. The appellant maintains that fencing was erected purely for the purposes of safety in containing dogs and young children to the rear of the dwelling. There was clear evidence of dogs having used the space at the time of my site visit and I have no reason to doubt that version of events. Photographs attached to the sales particulars when the property was marketed in 2010 show the garden without the fencing immediately to the rear and it seems likely that the fence is a recent intervention in response to specific needs.
9. It is not uncommon for people to fence off specific areas of a garden, to contain pets or separate a veg plot from a different part of the garden for example. As such, the presence of the fence separating one area from another does not alter the close relationship between the dwelling and associated garden land beyond. Photographs have been provided showing residents of the dwelling using the garden space beyond the enclosed area and it does not seem that the domestic use has been contained by the fencing.
10. Having regard to the arrangement described above, and relevant caselaw put forward by the Council, I am of the view that the land identified within the enforcement notice forms part of the curtilage of the dwelling at No.33 Newtown. It retains a close relationship with the dwelling and is one of a row of gardens which are similarly associated with respective neighbouring properties.
11. Given my conclusions in that regard it is necessary to consider whether the building amounts to development permitted by the terms of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The parties do not appear to dispute that the building meets the conditions, limitations and size parameters set out within paragraph E.1 and I have no reason to take a different view. However, the Council questions whether the proposal would be

incidental to the enjoyment of the dwellinghouse on account of its scale. In addition, the Council has questioned the future use of the building pointing to the planning history of previous applications to erect a dwelling.

12. The appellants maintain that they decided to build a garage/outbuilding on the land after previous proposals for a bungalow had been refused. They subsequently applied for a garage/outbuilding with a similar footprint to that which has been constructed but with a pitched roof. It is not unusual for someone to revise plans or ideas following the previous refusal of different proposals and I see little reason to dispute that the building is intended for that purpose purely on the basis of the planning history. I note that Council officers wrote to the appellants three times, one letter and two emails, to offer the view that the building would be 'permitted development' providing its height was no more than 2.5m. The Council was aware of the intended footprint and scale at that stage.
13. The form and appearance of the structure is reflective of the suggested function, with a large garage door opening to the front. Internally it appeared to have been fitted out with shelving along one wall at the time of my visit and the internal walls were bare blockwork. The UPVC windows and doors to the side and rear are domestic in nature but that is not unusual for a domestic outbuilding and is not necessarily indicative of an alternative use. A partition had been erected but that could simply be to segregate different areas of storage. Whilst it is undoubtedly longer than a standard single garage it is not excessively large in comparison to the scale of the dwelling which will generate parking requirements and the storage of domestic and garden paraphernalia.
14. Although older, the outbuildings to the rear of Nos 27 and 29 are of a similar length, stretching back into the rear gardens. Thus, the scale is not unusual in the surrounding context or indicative that the building would not have an incidental function. The structure is located close to the rear of the dwelling, as set out above. Consequently, I am satisfied that the purpose of the structure would be as stated by the appellants and have no legitimate reason to suppose otherwise. Clearly, my decision is made on the facts of the case before me. Should the building be put to any other use in future it would be open to the Council to investigate and consider any appropriate action at such time.
15. Consequently, the building is within the curtilage of the dwelling, its dimensions comply with the conditions and limitations of Class E and its function would be incidental to the enjoyment of the existing dwelling at No.33. On that basis, the building benefits from permitted development rights granted by the GPDO and does not constitute a breach of planning control. It follows that the appeals on ground (c) succeed.
16. Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (a) and the appeals under ground (f) of section 174(2) to the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, as amended, do not need to be considered.

Chris Preston

INSPECTOR