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## Appeal Decision

Site visit made on 27 April 2022

**by Felicity Thompson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 May 2022**

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**Appeal Ref: APP/V4250/C/21/3288759**

**67 Chatsworth Fold, Ince, Wigan WN3 4LT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Mr Craig Naylor against an enforcement notice issued by Wigan Metropolitan Borough Council.
  - The notice was issued on 9 November 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised elevated outbuilding located on the Land. The outbuilding is in excess of 2.5 metres in height and the elevated floor level is in excess of 0.3 metres from ground level. The outbuilding does not therefore benefit from permitted development rights pursuant The Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The requirements of the notice are:
    1. Reduce the height of the outbuilding so it does not exceed 2.5 metres from ground level; and
    2. Reduce the elevated floor level so it does not exceed 0.3 metres from ground level.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is varied by:
  - (1) Deleting requirement 2 from section 5 of the enforcement notice – what you are required to do.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

### The Enforcement Notice

3. The description of the matters which appear to constitute the breach of planning control state that the elevated floor level is in excess of 0.3 metres from ground level. However, the internal floor level forms part of the outbuilding and could not be fairly described as a raised platform for the purposes of Part 1 Class E.1.(h) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). As such the requirement to lower the floor level is excessive and I shall delete this.

### Preliminary Matter

4. The appeal was made on the basis of ground (b) only however, the appellant does not dispute that an outbuilding has been erected but contends that the

outbuilding constitutes permitted development. This is an argument more pertinent to an appeal on ground (c). Since the appellant made such comments on his appeal form, upon which the Council has had the opportunity to comment, I shall determine the appeal as though this ground was pleaded.

### **Grounds (b) and (c)**

5. The grounds of appeal are (b) that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact and (c) that those matters (if they occurred) do not constitute a breach of planning control. Therefore, the burden of proof is on the appellant to demonstrate that an outbuilding more than 2.5 metres in height has not been erected and that if it has it does not constitute a breach of planning control.
6. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order subject to conditions and limitations. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
7. Development is not permitted by Class E if any part of the building would be within 2 metres of the boundary of the curtilage of the dwellinghouse; and it would exceed 2.5 metres in height.
8. The GPDO states that *Unless the context otherwise requires, any reference in this Order to the height of a building...shall be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building...in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.*
9. The Governments Technical Guidance<sup>1</sup> reiterates that references to height is the height measured from ground level. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building. When measuring the height of a building, ground level is the level that existed before the ground was raised or lowered.
10. At my visit I gave the main parties an opportunity to measure the height of the outbuilding from where they considered it should be measured. The result being the Council's measurement at 2.6m and the appellant's 2.35m. The Council measured from the level of the ground at the front of the outbuilding and the appellant took their measurement from a notional point above the ground level as it exists.
11. As already stated, the onus of proof is on the appellant. Whilst in his submissions the appellant referred to the ground level having been graded; I have no substantive evidence about the ground level as it may have previously existed. Consequently, whilst I acknowledge the appellant's measurement, there is insufficient evidence for me to conclude, on the balance of

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<sup>1</sup> Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

probabilities, that their measurement is accurate and that the outbuilding is not more than 2.5m in height.

12. Accordingly, I conclude that the outbuilding measures over 2.5m in height and therefore as a matter of fact the breach, as alleged, has occurred. The ground (b) appeal therefore fails.
13. Since the outbuilding is within 2 metres of the boundary of the curtilage of the dwellinghouse and exceeds 2.5m in height it fails to meet the Class E.1.(e)(ii) requirement. Accordingly, the development does not comply with all the conditions and limitations of Class E and therefore is not permitted by the GPDO.
14. Since the development is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) therefore fails.

### **Conclusion**

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

*Felicity Thompson*

INSPECTOR