
Appeal Decisions

Site visit made on 12 October 2022

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

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal A: APP/P5870/C/21/3288574

Appeal B: APP/P5870/C/21/3288586

45 Brinkley Road, Worcester Park KT4 8JE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Lilit Arakelyan and Mr Armen Ghazaryan against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice was issued on 15 November 2021.
 - The breach of planning control as alleged in the notice is the erection of a ground floor structure to the rear of the property.
 - The requirements of the notice are:
 - i. Demolish the structure; and
 - ii. Remove from the land all building materials, rubble and equipment arising from compliance with step (i) above and restore the Land to the state it was prior to the breach of planning control.
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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The appeal on ground (c)

1. The ground of appeal is that the breach alleged does not constitute a breach of planning control. The erection of a ground floor structure to the rear of the property comprises operational development within the meaning of s55 of the Act for which, s57 indicates, planning permission is required.
2. In this case the enforcement notice relates to a large structure which is attached to the rear of the property. At the time the enforcement notice was served the structure was in excess of 10 metres in length and exceeded 2.5 metres in height. It is my understanding that a prior approval is in place for the erection of a 6 metre deep rear extension and there is a subsequent approval for a single storey rear extension which was approved on 23 December 2021. It is clear that the structure that has been built does not comply with the terms of the approval.
3. The appellant argues that the pergola does not cover more than 50% of the land around the original house, is set approximately more than 2.0 metres from 47 Brinkley Road and more than 8.0 metres from 43 Brinkley Road. It is also contended that there is clear separation between the 6 metre rear extension and the pergola structure and therefore it is a freestanding outbuilding under the terms of Class E of the Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

4. Although I can see that some alterations have been made to the overall rear extension, including some reduction in height and efforts have been made to separate the pergola from the 6 metre rear extension, it is quite clear that the entire rear extension comprising the 6 metre rear extension and pergola is a single entity. There is a short gap between the steelwork and masonry wall, but the pergola is still part of the extension as it is attached by the new masonry wall and also by rainwater goods. As such, it does not comprise a building incidental to the enjoyment of a dwellinghouse and Class E cannot apply.
5. Even as an enlargement to the dwellinghouse it fails to meet the requirements of Class A of the GPDO because it significantly exceeds the limitation of 6 metres from the rear wall of the original semi-detached property. Therefore, the development does not comprise permitted development for which planning permission was granted by way of Class E or Class A. The evidence before me also shows that there is no planning permission in place for the development. Therefore, the appeals on ground (c) fail.

The appeal on Ground (f)

6. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes 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 entire demolition of the structure, the purpose is to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect the appeals on ground (f) fail.
7. Furthermore, since there is no appeal on ground (a) and the purpose of the notice is to remedy the breach of planning control, any lesser steps that would not remedy the breach cannot be accepted through ground (f).

Formal Decision

8. The appeals are dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR