



Appeal Decision

Site visit made on 14 February 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/J2373/C/22/3299346

1 Brookfield Avenue, Blackpool FY4 5HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Curtis Francis against an enforcement notice issued by Blackpool Borough Council.
- The enforcement notice was issued on 9 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber structure to the rear.
- The requirements of the notice are to remove the timber structure in its entirety.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. There is no ground (a) appeal and associated deemed planning application. Therefore, I have not considered matters such as the effect of the timber structure on the character and appearance of the area in terms of whether or not planning permission should be granted. Nor can I take account of the proliferation of other outbuildings, garages and sheds in the vicinity, as shown in the appellant's photographs, as this would concern the planning merits. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

The ground (e) appeal

2. The main issue to consider is whether the appellant has shown, on the balance of probabilities, that the notice was not served as required by Section 172 of the 1990 Act and, as a result, there has been substantial prejudice. Section 172(2) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
3. The Council has confirmed that the notice was served on all the owners and occupiers it identified, and any others with an interest in the land. In the

absence of any evidence to the contrary, I am satisfied that the notice was served as required.

4. In any event, the occupier was clearly aware of the notice as the appeal was made within the relevant timescales. As such, there has been no substantial prejudice. The appeal on ground (e) fails, therefore.

The ground (b) appeal

5. The ground (b) appeal is that the matters alleged in the enforcement notice have not occurred as a matter of fact.
6. The appeal property is a two-storey house with a rear garden. The appellant accepts that a timber structure has been built in the position indicated on the plan attached to the notice. It is used to house pigeons. Therefore, on the basis of the appellant's own evidence, I find that the matters alleged have occurred as a matter of fact. The ground (b) appeal must fail, therefore.
7. Whether or not the matters alleged amount to development, for which planning permission would be required, is considered below as part of the ground (c) appeal.

The ground (c) appeal

8. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. Section 55(1) to the 1990 Act says that the word 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Development that has taken place without planning permission constitutes a breach of planning control.
9. Section 55(1A) says that for the purposes of the Act 'building operations' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. The erection of an entirely new building is not specifically mentioned, however, it falls within the definition as work normally undertaken by a person carrying on business as a builder.
10. The timber structure is relatively large and is sited on an elevated platform, accessed via steps. Given the manner and nature of the work involved in the erection of the structure, and its physical construction and size, its siting required an element of pre-planning and necessitated erection in accordance with a specific end use in mind. I consider that the structure amounted to operational development because the work involved the carrying out of building operations, which resulted in an entirely new building.
11. For completeness, I have considered whether the development falls within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015, which concerns buildings within the curtilage of a dwellinghouse. E.(a) states 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.

12. Under E.1(b) development is not permitted by Class E if the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50 percent of the total area of the curtilage (excluding the ground area of the original dwellinghouse). The timber structure targeted by the notice is one of several structures within the curtilage of the house. I saw that the ground area covered by the structures exceeds 50 percent of the total area of curtilage and so permitted development rights do not apply.
13. Furthermore, the Council argues that the structure extends to 3.6 metres in height and lies on the property boundary. Hence, it would fail to meet the limitation under E.1 (e)(ii), which states that development is not permitted if the height of the building would exceed 2.5 metres in the case of the building within 2 metres of the boundary of the curtilage of the dwellinghouse. The appellant has not provided any response to this point.
14. I conclude on this issue that the matters alleged are development for which planning permission would be required. In the absence of any such permission, the matters alleged constitute a breach of planning control and the appeal on ground (c) fails.

The ground (d) appeal

15. In order to succeed on ground (d), the appellant must show on the balance of probabilities, that the matters alleged in the enforcement notice were substantially completed four or more years prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
16. The appellant maintains that the structure has been present for a number of years but there is limited supporting evidence. An aerial image from Google Earth, dated April 2015, appears to show a structure in the location of the building enforced against. However, the image quality is poor and it is not possible to reach a finding that the structure which exists on the land had been substantially completed by the date of the image. It seems that a building has been present on the land but it has been added to relatively recently. The other image supplied has a handwritten date of July 2022, which is after the notice was issued so is not relevant.
17. The onus of proof lies with the appellant and the image supplied does not provide sufficient clarity or detail. The appeal on ground (d) fails, therefore.

The ground (f) appeal

18. The Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury caused by the breach. The notice requires the removal of the unauthorised structure. Its purpose is to remedy the breach of planning control. What must be considered is whether the step required exceeds what is necessary to achieve that purpose.
19. The appellant has not provided any evidence or suggested any lesser steps that would remedy the breach of planning control. Even if permitted development rights were to be argued, these cannot be applied retrospectively. I conclude that the notice does not exceed what is necessary to remedy the breach of planning control and achieve the statutory purpose behind the notice. The appeal on ground (f) fails, therefore.

The ground (g) appeal

20. The ground (g) appeal is that the period for compliance with the notice falls short of what should reasonably be allowed. The timber structure is used as a pigeon shed and the appellant is seeking further time to make alternative arrangements for the birds. In addition, I note that the appellant has a disability. Age and disability are 'relevant protected characteristics' for the purposes of the Equality Act 2010 and the Public Sector Equality Duty. Hence, I must have due regard to the need, among other things, to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. The retention of the development would enable the appellant to keep his pigeons, which are a source of comfort and support. However, it may be possible to house the birds elsewhere locally, or within the site, subject to further discussions with the Council.
21. The harm resulting from the development is considerable and the negative impact on the appellant of dismissing this appeal would not outweigh the conflict with local planning policy, especially given the alternatives available. I shall, therefore, extend the compliance period to four months to allow further time to consider the other options or to re-locate the birds. I find this to be reasonable and proportionate in the circumstances. The ground (g) appeal succeeds to this limited extent.

Conclusion

22. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with a variation.

Formal Decision

23. It is directed that the enforcement notice is varied by the deletion of the compliance period of one month in paragraph 6 of the notice and its replacement with a compliance period of four months. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector