



Appeal Decision

Site visit made on 21 February 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/Y0435/C/22/3293397

6 Ferndale, Eaglestone, Milton Keynes MK6 5AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Tomasz Czubaj against an enforcement notice issued by Milton Keynes Council.
 - The notice was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey outbuilding adjoined to and situated at the front of the property.
 - The requirements of the notice are:
 - (i) Remove the structure.
 - (ii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above and restore the land to its condition before the breach took place.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. The evidence before me refers to matters relating to the planning merits of the development, including planning policy and where the outbuilding can be viewed from. However, as there is no appeal on ground (a) and no deemed planning application for me to consider, these matters are not relevant to my decision.
3. Similarly, whilst I acknowledge comments about how the outbuilding was going to be, and is used, and the misgivings expressed by the appellant regarding the Council's approach to the investigation, these have no bearing on my consideration of the appeal.

The appeal on ground (c)

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
5. Although in submissions the appellant refers to the outbuilding being a temporary and portable shed, no substantive case has been made on ground (c).

6. By virtue of section 55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining, or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
7. A 'building' in section 336(1) of the Act includes 'any structure or erection'. The main characteristics of a building as identified by the courts, as a matter of fact and degree, are size, permanence and physical attachment. No one test is conclusive.
8. The outbuilding is relatively substantial in size and was evidently constructed on the site. It adjoins the house and in parts the wall surrounding the site, and whilst it may not have foundations it is fixed to the ground by its own weight. There is no evidence, beyond the appellant's assertions, to support the temporary nature of the outbuilding nor that it could, or might, be moved.
9. Accordingly, I consider the erection of the outbuilding to constitute a building operation and therefore development which requires planning permission.
10. The appellant in submissions stated that *the structure was erected in accordance with the law, not exceeding 3m in height, and therefore without the need to apply for a permit.*
11. Although it has not been made clear, it seems the appellant may be referring to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Consequently, for completeness, I shall address this matter.
12. The appellant argued that the outbuilding is not an extension but a shed. The allegation is that the outbuilding adjoins the property. It is necessary to determine whether the outbuilding is freestanding or an extension to the house, since this is relevant to determining which class or classes within the GPDO may be relevant, since Part 1 Class A permits the enlargement, improvement, or other alteration of a dwellinghouse subject to conditions and limitations. Whereas Part 1 Class E permits the provision within the curtilage of the dwellinghouse of buildings required for a purpose incidental to the enjoyment of the dwellinghouse subject to conditions and limitations.
13. In respect of Class E buildings, the Technical Guidance¹ states that buildings which are attached to the house are not permitted under Class E, they would be subject to the rules in Class A.
14. In this case, whilst it seems there are no adjoining doors between the house and outbuilding, the outbuilding abuts the house such that there is no evident gap between the two. At my visit I observed sealant type material between the walls of the outbuilding and house. Whilst the outbuilding may not appear as a typical extension, it is attached to the house.
15. Consequently, the outbuilding consists of an enlargement to the house such that it would be considered against Part 1 Class A of the GPDO.

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

16. In order to be permitted development the proposed development must meet *all* [my emphasis] the limitations and conditions under each Class relevant to the proposal, in this case those in Class A.
17. The roof of the outbuilding adjoins the front (principal) elevation of the house. Consequently, the outbuilding fails to meet the Class A.1.(e)(i) requirement as it extends beyond a wall which forms the principal elevation of the original dwellinghouse.
18. It also fails the Class A.1.(e)(ii) requirement since the outbuilding extends beyond the side elevation of the original dwellinghouse which fronts the highway (public footpath).
19. Additionally, in order to benefit from the provisions of Part 1 Class A the outbuilding must comply with the condition at paragraph A.3.(a) that is the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. In the case of the outbuilding, they are not.
20. Consequently, since the outbuilding does not comply with all the limitations and conditions in Class A, it is not permitted by Class A of Part 1 of Schedule 2 of the GPDO.
21. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. 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) fails.

The appeal on ground (f)

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
23. As the enforcement notice requires the structure and all resulting materials and rubble be removed and the land restored, I find the purpose is to remedy the breach of planning control.
24. The appellant suggested *raising the brick fence to the height of other brick fences in the neighbourhood* to screen the outbuilding from public view. However, this is an argument which relates to and requires a consideration of planning merits.
25. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
26. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

27. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant's case on this ground is that the outbuilding can be dismantled, transported, and erected elsewhere. Further, that this process should be planned one year ahead so a suitable place can be found, and all works carried out safely during the summer, as the walls would be dangerous to handle in the windy months of winter.
28. The time period given for compliance within the enforcement notice is to allow for the physical works associated with the notice to be removed. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision.
29. I acknowledge the appellant's desire to reuse the outbuilding, and that they are an essential worker. However, given the straightforward nature of the construction, and the time of year, I consider the period of two months for the removal of the structure and resultant materials from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred. The appeal on ground (g) therefore fails.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR