

Appeal Decision

Site visit made on 6 June 2023

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 26th June 2023

Appeal ref: APP/Z2315/D/23/3321597

91 Talbot Drive, Briercliffe, Burnley BB10 2RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for development carried out without planning permission.
 - The appeal is made by Mr R Cheetham against the decision of Burnley Borough Council.
 - The application, ref. HOU/2023/0009 dated 6 January 2023, was refused by a notice dated 16 February 2023.
 - The development proposed is the construction of an outbuilding within the rear garden.
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Decision

1. The appeal is dismissed. Planning permission is refused.

Main issue

2. The main issue is the likely effect of the Appellant's outbuilding project on the amenity of occupiers of the adjoining property, No. 89 Talbot Drive.

Reasons

3. The appeal concerns a retrospective application for a detached outbuilding in the rear garden of No. 91 Talbot Drive, Briercliffe. The outbuilding is 6.7m long, 3.3m wide and 2.5m high. The walls are clad with dark grey horizontal boards. The outbuilding has been built close to the boundary fence with No. 89 next door to the north-east. The application had been amended to add a 2.5m high fence alongside the outbuilding. The fence would have solid wooden panelling 2m high, topped by a 0.5m lattice panel.
4. The Council said the outbuilding had led to a reduction in amenity and outlook for occupants at No. 89, contrary to Local Plan policies SP5, HS4 and HS5; to the adopted Residential Extensions Supplementary Planning Document and the National Planning Policy Framework.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), as amended at Schedule 2, Part 1, Class E, permits provision within the curtilage of a dwellinghouse of - (a) any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such. Limitation E.1(e) says development is not permitted if the height of the building, would exceed - (ii) 2.5 metres in the case of a building, within 2

metres of the boundary of the curtilage of the dwellinghouse; also - E.1(f), the height of the eaves of the building would exceed 2.5 metres.

6. For the Appellant, Mr Cheetham, it was said the outbuilding's height was 2.5m. that was within Order limits. But the 0.2m ground level drop to No. 89 meant the outbuilding was 2.7m above the adjacent ground level at No. 89. Mr Cheetham accepted that where any part of a development exceeds Order limits, the whole development is without planning permission. Here, he said the outbuilding only required planning permission because of a land level drop of about 0.2m on one side.
7. The permissions in the Order, commonly known as permitted development rights, are subject to limitations and conditions. For householders, their purpose is to allow them to exercise their rights to carry out development while protecting the interests of their neighbours and the wider environment. Where development is carried out in excess of permitted development limits the effect on other interests needs to be examined.
8. I agree with the submission that the extent of Order permissions is a material consideration in determining the planning merits of an appeal. Where planning permission is refused on appeal for the retention of the outbuilding, it would be open to the Council to take enforcement action seeking to remedy the breach of planning control. An enforcement notice could include a requirement that the outbuilding be removed or the existing outbuilding be altered. The recipient of a notice to remove the outbuilding could thereafter erect a new outbuilding to comply with Order limits. A boundary fence of up to 2m above the garden level of No. 89 could also be built, (Order: Schedule 2, Part 2, Class A – limitation A.1(b)), without the need to apply for planning permission.
9. In considering the merits of this appeal, I consider that the Council were right to oppose the retention of the appeal outbuilding. It is of an uncompromisingly stark design, a dark rectangular block that provides a somewhat overbearing effect close to the boundary with No. 89, impinging detrimentally upon the outlook from the rear of No. 89. The 2.5m high fence would unfortunately add to the enclosed effect at No. 89, even though assuaged to some extent by the use of a lattice 0.5m deep at the top of the fence. Those matters were understandably of concern to the occupier of No. 89.
10. The appeal outbuilding's height is less than 10% above the Order limit. But that limit is in place to ensure that a balance between Order permissions and, here, the amenity enjoyed by neighbours is provided. Alterations to the outbuilding could be made to comply with Order permissions. A fence no more than 2m high could be put up. Arguably, such a result would not produce a dramatic improvement. But in my opinion, the amenity harm caused by the appeal project is such that planning permission should be withheld.

Conclusion

11. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

John Whalley

INSPECTOR