



Appeal Decision

Site visit made on 5 September 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/X0360/C/22/3303787

Land at 12 Culver Lane, Earley, RG6 1DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mahboob Ali Khan against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 24 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building and associated hardstanding as shown hatched blue in the approximate location on the plan attached to the notice.
- The requirements of the notice are: (i) Demolish the building in the approximate position hatched in blue on the attached plan. (ii) Remove the foundations and grey paving slabs as shown in the approximate location hatched in blue on the attached plan. (iii) Disconnect and remove all services. (iv) Permanently remove from the land all materials resulting from compliance with steps (i), (ii) and (iii) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Wokingham Borough Council against Mr Mahboob Ali Khan. This application is the subject of a separate Decision.

Ground (e) appeal

3. The ground of appeal is that copies of the enforcement notice were not served on the owner and the occupier of the land to which it relates and on any other person having an interest materially affected by it, as required by s172 (2) of the Act. The onus is on the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The notice attacks a freestanding single storey structure erected towards the end of the rear garden of a detached bungalow. The structure has external walls of brickwork with a pitched tiled roof over, there is an open-sided porch and canopy at the front and a white UPVC walled lean-to with a translucent roof attached to the rear. Inside the structure is a living area, double bedroom, a small kitchen area and bathroom, with a separate room in the rear lean-to.

5. The structure is physically attached to an outbuilding located in the rear garden of 10 Culver Lane (No 10), a two-storey dwelling in separate ownership. By itself, such attachment does not necessarily mean that the structure has encroached onto land beyond that owned by the appellant. Nevertheless, during my visit I observed that a significant portion of the structure is clearly situated within the grounds of No 10. This portion lies on the far side of the fence which separates the appellant's rear garden from that at No 10. There is little to suggest that the fence line has been moved at any stage. The copies of HM Land Registry Title Plans supplied confirm that this portion of the structure is situated on land within the ownership of No 10. Accordingly, the structure is not wholly situated within the grounds of the appellant's bungalow. The drawing submitted with a recent planning application¹ does not include the whole structure, as it does not show the portion in the grounds of No 10.
6. No copies of the notice were served on the owners and occupiers of No 10. Therefore, based on the available evidence, on the balance of probability copies of the notice were not served as required by s172 (2) of the Act.
7. At s176 (5), the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. As the owners and occupiers of No 10 were not served, they would have been almost entirely reliant on the appellant to make them aware of the notice, its implications and their right of appeal. However, whether this occurred in practice is unclear. No owner or occupier of No 10 submitted an appeal or alternatively, made representations in respect of this appeal. It is entirely possible that such owners and occupiers could have appealed separately on grounds other than those advanced by the appellant and/or drawn attention to additional matters in support of their own appeal. Consequently, there is no reasonable assurance that the owners and occupiers of No 10 have been properly afforded the opportunity to take part in these proceedings.
8. Upholding the notice would have significant consequences for the owners and occupiers of No 10, as part owners and occupiers of the land to which the notice relates. In particular, the remedial works required by the notice would involve demolishing the portion of the building in the grounds of No 10, whilst the outbuilding at No 10 would also need to be made good following those works. In addition, there would be an inevitable period of disruption whilst the works were undertaken. Consequently, in my view there would be substantial prejudice if the appeal were to proceed without giving the owners and occupiers of No 10 an opportunity to take part in the proceedings. It follows that it would not be appropriate for me to disregard the failure to serve all of the owners and occupiers of the land to which the notice relates.
9. For the above reasons, the ground (e) appeal succeeds. It is open to the Council to issue a fresh enforcement notice if it is deemed expedient to do so, with copies served on all the owners and occupiers of the land to which it relates and with a more accurate plan attached.

¹ Council Ref: 220567.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed on ground (e). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (a), (b), and (f) and the application for planning permission deemed to have been made under section 177 (5) of the 1990 Act as amended do not need to be considered.

Stephen Hawkins

INSPECTOR