



Appeal Decision

Site visit made on 25 September 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2023

Appeal Ref: APP/J0405/C/23/3323232

30 Belgrave Road, Aylesbury, Buckinghamshire HP19 9HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Raja Khan against an enforcement notice issued by Buckinghamshire Council
 - The notice was issued on 19 April 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of an outbuilding.
 - The requirements of the notice are
 1. Permanently remove (demolish) the outbuilding (shown in the approximate location and hatched in black on the attached Plan) from the Land and ensure that all materials used in its construction are removed from the Land.
 2. Permanently remove the hard standing on which the outbuilding stands from the Land.
 3. Permanently remove any debris or materials from the Land which arise as a result of complying with steps 1 and 2 of the Notice.
 - The period for compliance with the requirement is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Decision

1. It is directed that the enforcement notice is varied by
 - i) deleting the second requirement in the notice in full
 - ii) deleting the words 'steps 1 and 2' from the third requirement of the notice and replacing them with 'step 1.'
2. Subject to the variations, the appeal is dismissed. The enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. The requirements need to match the allegation. The allegation refers to the erection of an outbuilding. The second requirement relates to removal of hardstanding which is not part of the wording of the allegation. The Council has subsequently confirmed that the second requirement can be deleted from the notice. No injustice is caused to any party as a result of that deletion. The reference to Step 2 also needs to be deleted from the third requirement as there is no longer a step 2. I will amend the notice accordingly.

The appeal under ground (a) and the deemed planning application (the DPA)

4. Although the Council's reason for issuing the notice refers separately to unneighbourly impact due to colour and scale, I consider that matter to relate to character and appearance rather than the living conditions of neighbouring occupiers.

Main Issue

5. The main issue is therefore the effect of the development on the character and appearance of the surrounding area and the host dwelling.

Reasons

6. Terraced properties on the section of Belgrave Road where the appeal site is located face each other in two rows and are divided by a path which provides access on foot to the front gardens of these properties. The appeal dwelling is at the end of a row of properties which share characteristics such as window and door styles. Fences or hedges to the front gardens of the properties form the boundaries to the path and the gardens are made up of largely grassed areas creating an open character.
7. The development consists of a rectangular wooden shed located in the front garden of the appeal property close to the front boundary with the path and the side boundary with No 32. The development is located between the front boundary and the front door of the appeal property. It is taller than the front boundary fence and has been stained red to match the front boundary fence and gate. Its incongruous appearance is in contrast with the style and traditional materials used for the host dwelling itself.
8. The shed is particularly prominent from neighbouring gardens of the properties between the appeal site and the end of the path due to low boundary treatments between those gardens. It is also highly visible from the end of the path for similar reasons and the use of bright colouring emphasizes its incongruous nature rather than creating a blending effect. Sheds are not commonly found in front gardens and do not form part of the character of the surrounding area to the appeal site. The location and scale of the development in the front garden means that it is out of keeping with both the host dwelling itself and the character of the surrounding properties and gardens.
9. Whilst the shed may contribute to the health and well-being of the appellant and his family, it is not clear why it has to be sited in such a prominent location. The appellant has indicated that he is willing to accept conditions that could alter the colour and provide for landscaping next to the development. However, changing the colour would not by itself address the prominence and scale of the development in a modest front garden. Any planting could take a long time to be sufficiently high to provide screening and it is not clear where planting would be located. Whilst a condition to control the use is proposed, the allegation relates to operational development not use.
10. The Council has referred to a grant of planning permission setting an undesirable precedent. However, I have assessed the development upon its own merits having regard to the character of the surrounding gardens and the appeal site.

11. I note that the appellant was unaware that the development required planning permission and has not sought to conceal its presence. However, those matters do not alter my findings of harm.
12. For the reasons given, the development does harm the character and appearance of the surrounding area and the host dwelling. It is therefore contrary to Policy B2 of the Vale of Aylesbury Local Plan which, amongst other things, requires development to respect and complement the scale and context of the site and the local distinctiveness and vernacular character of the locality. I find Policy B3 of the Local Plan to be less relevant as it relates to living conditions rather than character and appearance.

Conclusion on ground (a)

13. I find that the development conflicts with the development plan read as a whole, and there are no material considerations to indicate that the development should be permitted despite the policy conflict. The appeal under ground (a) fails and planning permission is refused.

An appeal under ground (f)

14. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As the notice requires the removal of the development, the purpose of the notice is to remedy the breach.
15. Section 173(4)(a) of the Act defines how the breach can be remedied namely “by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land *or by restoring the land to its condition before the breach took place.* (my emphasis) The requirement of the notice in requiring the removal of the shed from the appeal site falls within Section 173(4)(a).
16. The appellant considers that it is excessive to require removal from the appeal site completely as the shed could be stored in the rear garden for future use and then retained either as permitted development or by making a future planning application. The Council has raised concerns about available space in the back garden due to the existing number of buildings and wishes to avoid creating a situation where open storage is occurring.
17. There is no agreement between the parties that relocating the shed in the rear garden would be permitted development and there is no express planning permission for it. No alternative wording is suggested and any alternative requirement would need to be precise as the appellant could face criminal prosecution for non-compliance. The appellant appears to be suggesting a two stage process of open storage followed by erecting the shed in the rear garden after discussions with the Council. There is therefore no certainty as to what will ultimately happen to it with this alternative proposal.
18. The appellant’s wish to relocate the shed in the back garden does not mean that the requirement to remove it from the appeal site is excessive. Whether or not the shed can be erected in the back garden is a matter that the parties can discuss outside of the appeal process. The Council is entitled to ask for the

shed to be removed from the appeal site to restore the land to its previous condition and the existing requirement is not excessive. The appeal under ground (f) fails.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR