



Appeal Decisions

Site visit made on 5 December 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal A Ref: APP/M1595/C/22/3297647

Appeal B Ref: APP/M1595/C/22/3297648

93 Mollands Lane, South Ockenden, Essex RM15 6DJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Priya Verma and Appeal B by Mr Jamie Tye against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 31 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of an outbuilding and decking area.
 - The requirements of the notice are:
 - (i) Reduce the height of the outbuilding to no more than 2.5m in height
 - (ii) Remove all materials arising from step (i) above from the land.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

2. Two appellants were named on the appeal form, Mrs Priya Verma and Mr Jamie Tye. In such circumstances the Planning Inspectorate allocates an appeal reference number to each appellant because, technically, two appeals have been made. In this case, the grounds of appeal are identical in relation to both appeals.

The Appeals on Ground (c)

3. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. In this case, the appellant's argument is that the building constitutes 'permitted development' on the basis that it complies with the limitations of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
4. Class E permits the construction of outbuildings within the garden of residential properties, for purposes incidental to the enjoyment of the dwellinghouse, subject to a number of limitations. The Council does not dispute that the buildings meet those limitations, with the exception of paragraph E.1(e)(2)

which states that the height of any building within 2 metres of the boundary of the property should not exceed 2.5m in height.

5. Since the appeal was submitted, the appellants maintain that an officer of the Council visited the property to take measurements and confirmed that the structure was no higher than 2.5m. However, no written confirmation of that from the Council has been provided and the representative of the Council who attended my accompanied site visit was seemingly unaware of it. In any event, the enforcement notice has not been withdrawn and the appellant has not withdrawn the appeal so I must make a decision.
6. At my visit I asked the parties to measure the height of the building from ground level. The structure has a flat roofed rear section which contains the four external walls, with a projecting flat roofed canopy to the front over the decking area. The canopy is a continuation of the building, as opposed to being a separate structure and is part of the structure that is 'attacked' by the enforcement notice.
7. The rear part of the building measured 2.48m from ground level to the top of the flat roof. However, the canopy is raised slightly above the height of the roof of the main part of the building and the top of the canopy roof is 2.61m from ground level. The decking is flush with ground level and would be permitted development of itself.
8. Given that the building and the attached canopy are a single structure the overall height is clearly above the 2.5m permitted by Class E and it does not constitute 'permitted development'. I am mindful that 11cm may not be substantially over the 2.5m height limit but it is not immaterial or *de minimis* in the context of the limitations of the GPDO and I am not aware of any leeway for discretion, a building either meets the limitations or it does not. In this case, the structure is higher than permitted by Class E.
9. As such, it does not benefit from planning permission granted via the GPDO and amounts to a breach of planning control, in the absence of any planning permission granted by the Council. It follows that the appeal on ground (c) must fail.
10. In the absence of any other grounds of appeal, or an appeal on ground (a), I cannot consider the planning merits of the development and I must dismiss the appeals and uphold the enforcement notice.

Chris Preston

INSPECTOR