



Appeal Decision

Site visit made on 5 March 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/Z4718/C/23/3324085

Land and property at 33 Greenlea Court, Dalton, Huddersfield HD5 8QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Miss Amit Kaur Singh against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the construction of an extension to the rear of the property.
 - The requirements of the notice are:
 - a) Permanently dismantle and remove the rear extension from the site.
 - b) Remove all dismantled resulting material from the site.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) 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 matter

2. I note that the sides of the pergola extension had previously been enclosed with fabric sourced from a marquee. However, for clarity, my decision is based on my observations.

The appeal on ground (c)

3. 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.
4. The appellant's case is made on the basis that the pergola is a temporary structure, not a permanent extension, because there was no digging, footings, or brick wall work, which they consider are typically associated with extensions. The appellant appears to seek to demonstrate that the pergola does not constitute development and therefore planning permission is not required.
5. 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.

6. A 'building' in section 336(1) of the 1990 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.
7. The pergola is constructed from timber posts, with a timber roof structure covered with corrugated plastic sheets. It was evidently constructed on site and is attached to the rear wall of the house and the pre-existing decking with metal brackets. Although relatively modest in size, there is no evidence that there is an intention for it to be moved or removed, nor that it could be moved without being dismantled.
8. Accordingly, I consider the erection of the pergola to constitute a building operation and therefore development which requires planning permission.
9. The appellant has not sought to demonstrate that the pergola constitutes permitted development however, they referred to some of the conditions and limitations of Article 3 Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Since the Council addressed this matter, I shall also in the interests of completeness.
10. Article 3 Schedule 2 Part 1 Class A of the GPDO relates to development within the curtilage of a dwellinghouse and grants planning permission for the enlargement, improvement, or other alteration of a dwellinghouse, subject to conditions and limitations.
11. Permitted development rights only apply when the development fully accords with the conditions and limitations set out in the Order. In this case it is evident that the pergola does not comply with the condition at A.3.(a) that is, the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
12. Since the pergola does not comply with the condition at A.3.(a), it does not constitute permitted development.
13. 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)

14. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
15. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.

16. In this case the enforcement notice requires the demolition of the pergola extension, and as such I find its purpose is to remedy the breach of planning control that has occurred.
17. That purpose can only be achieved by restoring the land to its condition before the breach took place – in other words by demolishing the pergola extension and removing all associated materials as is set out in the requirements.
18. No lesser steps would remedy the breach of planning control and in this respect the requirements of the notice are not excessive.
19. The appellant has not suggested any lesser steps. Their case is essentially that they consider the pergola causes no harm to the character and appearance of the house, or the living conditions of neighbouring occupiers, and similar structures are quite common within the locality. These are matters which relate to planning merits.
20. However, 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). Similarly, whilst I acknowledge the pergola was constructed by experienced builders, this, and the appellant's misgivings about the Council's handling of the case are matters which have no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
21. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

Conclusion

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

Felicity Thompson

INSPECTOR