



Appeal Decisions

Site visit made on 30 April 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal A Ref: APP/A2280/C/22/3305415

Appeal B Ref: APP/A2280/C/22/3305416

Land at 5 Merivale Grove, Chatham, Kent ME5 8HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Chris Taylor and appeal B by Mrs Lacey Taylor against an enforcement notice issued by Medway Council.
 - The notice was issued on 14 July 2022.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the construction of a two storey wooden structure/outbuilding to the rear of the dwelling.
 - The requirements of the notice are to:
 - (i) Demolish the two storey wooden outbuilding to the rear of the dwelling in its entirety.
 - (ii) Remove all resultant debris and materials from the Land.
 - The period for compliance with the requirements is: two months.
 - The appeals are 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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The Appeals on Ground (c)

1. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
2. There is no dispute that the outbuilding constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the outbuilding.
3. My attention has been drawn to permitted development rights that grant planning permission for certain forms of development, including outbuildings. These are granted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) subject to a number of restrictions.
4. The outbuilding has been constructed at the end of the rear garden close to the side boundaries of the property. It comprises a timber clad ground floor with pitched roof and dormer window facing toward the house. The Council suggest that it is 1.8m high to the eaves and 3.8m to the ridge, which is not disputed by the appellant.

5. As the outbuilding is within 2m of the boundary of the property and more than 2.5m in height, it does not comply with Schedule 2, Part 1, Class E(e) of the GPDO.
6. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the outbuilding is not permitted development.
7. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
8. For these reasons, I conclude that the appeals under ground (c) should fail.

The Appeals on Ground (f)

9. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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. In this case, the requirements seek the building be demolished. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
10. The appellant suggests that the notice should be varied to remove the pitched roof and replace with a flat roof. That may result in a building that would reflect the requirements of the GPDO. However, under the GPDO it is not possible for development to become permitted development retrospectively. It would be necessary, therefore, for the outbuilding to be completely removed prior to undertaking any new construction that might benefit from a planning permission granted by the GPDO.
11. Since an appeal on ground (a) has not been made there is no deemed application for planning permission before me. As a result, I am unable to consider granting planning permission for the whole or part of the existing development to remain. Allowing part of it to remain would not fully remedy the breach of planning control.
12. I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeals fail on ground (f).

Formal Decision

13. The appeals are dismissed.

AJ Steen

INSPECTOR