



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th June 2024

Appeal Ref: APP/N4720/C/23/3334467

Land at 407 Whitehall Road, Lower Wortley, Leeds LS12 6LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Abida Khanum against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 8 November 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of an outbuilding to the rear of the property.
 - The requirements of the notice are:
 - Step 1 – Demolish the unauthorised outbuilding completely from the land and make good the rear garden area.
 - Step 2 – Remove from the site any resulting material, rubbish and equipment arising from compliance with Step 1.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text 'Three months.' from the requirements paragraph, and its substitution with the text: 'Six months'.
2. The appeal is dismissed and the enforcement notice, as amended, is upheld.

Preliminary Matters

3. The written evidence alone was sufficient for the consideration of the appeal, and so it was not necessary for me to carry out a site inspection.

Ground (c)

4. Ground (c) is that there has not been a breach of planning control, for example, because permission has already been granted, or it is permitted development. The onus lies on the appellant to make out their case to the standard of the balance of probabilities.
5. The appeal property is a semi-detached dwelling sitting on a corner plot. Previously, a detached garage was located to the rear of the plot behind the house. This was demolished and replaced with the outbuilding that is the subject of the appeal. The appellant provides, at her Figure 2, a photograph of the previous garage and the land levels of the rear plot in 2015.
6. The appellant submitted a planning application (ref: 21/09582/FU) for the new outbuilding which was refused in January 2022. Subsequently, the appellant made an application (ref: 22/06668/CLE) for a Lawful Development Certificate (LDC) for the outbuilding, which was refused in October 2022. This decision

was appealed (ref: APP/N4720/X/22/3313210) with the outcome that the Council's refusal to issue an LDC was confirmed to be well-founded.

7. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) allows for the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Within the terms of Class E, if any part of such a building exceeds 2.5m in height, and is located within 2m of the curtilage boundary, it will not be permitted development. There is no dispute between the parties that the outbuilding is within 2m of the boundary. Therefore, if the height of the outbuilding exceeds 2.5m, it will not fall within permitted development limits, and will require planning permission.
8. In response to previous concerns, the appellant has submitted revised plans showing the outbuilding and its dimensions as built. She has also provided an annotated photograph showing the dimensions of the building in the context of the surrounding plot.
9. The 'Permitted Development Rights for Householders Technical Guidance September 2019' (the Technical Guidance) indicates that 'height' means the height measured from ground level. It states that ground level is the surface of the ground immediately adjacent to the building. Where the ground level is not uniform, then the ground level is taken to be the highest part of the surface of the ground next to the building.
10. In this particular case, the levels around the outbuilding vary in height. There is a raised concrete area to one side of the building which is accessed from outside the plot through a pair of gates. From that level, steps lead to a lower level inside the plot. The main door of the outbuilding is reached by a second run of steps rising from that lower ground level. At her figure 4, the appellant shows the dimensions of the outbuilding as constructed. From the higher level to the side, the building is approximately 2.43m in height. At the front, the building is shown as measuring about 2.83m from the top of the retaining wall.
11. The definition within the Technical Guidance says that ground level would not include any addition laid on top of the ground, such as decking. The key question, then, is whether the raised ground level at the side of the outbuilding may be taken to be the ground level for the purposes of this appeal.
12. The appellant argues that, in contrast to a decking structure, the ground level at the side of the building is a concrete structure. She gives a number of dictionary definitions and examples to demonstrate that the ground is the surface of the earth, which indeed the concrete surface has now become. She goes on to argue that the concrete surface is on a continuous level with the surrounding area, which I take to mean the ground level outside the access gates.
13. However, it is apparent from the appellant's statement that the ground level in the plot was excavated from its previous level to accommodate the new outbuilding. That being the case, there was a need to build up the space at the side of the new building and provide steps so that the rear plot could still be accessed from the double gates without a significant drop. This work was, in all probability, done at the same time as the outbuilding was constructed, as part of a single operation.

14. In the absence of evidence to the contrary, I therefore reach the same conclusion as the previous Inspector, which is that the surface next to the outbuilding at the side was raised above the original ground level to accommodate the new development. As such, it constitutes an addition laid on top of the ground for the purposes of the GPDO. This factor takes the outbuilding outside the limitations of Class E and so it is not permitted development. Planning permission is therefore required for the development, and there is no evidence of such a permission.
15. On the basis of the evidence before me, ground (c) must fail.

Ground (f)

16. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. The appellant suggests that, as a lesser step, the height of the outbuilding could be reduced so as to fall within the permitted development limitations available at the property.
17. However, the GPDO does not grant householder permitted development rights retrospectively. In other words, an outbuilding at the appeal site would only be permitted by the GPDO if it met the relevant limitations when it was constructed. As the new outbuilding exceeded those limits when it was built, it will not be permitted under the GPDO if or when it is later altered. Nevertheless, the appellant is entitled to construct an outbuilding that falls within permitted development rights once the notice has been complied with.
18. In conclusion, then, I find that the requirements are not excessive, and no lesser steps have been identified that would achieve the aim of the notice, which is to remedy the breach.
19. The appeal on ground (f) therefore fails.

Ground (g)

20. Ground (g) is that the time given to comply with the notice, in this case three months, is too short.
21. The appellant argues that this timescale is insufficient to obtain quotes for the demolition or alteration of the outbuilding and to schedule these works. Furthermore, by spring or early summer, reputable tradespeople capable of undertaking such work may have a significant level of existing work on their schedule, and may not be able to accommodate the work at short notice.
22. In response to these concerns, the Council indicate that they would accept an extension of the time period to six months. In my view, this would give ample time for the appellant to make the arrangements and carry out the works.
23. To that extent, the appeal succeeds on ground (g).

Conclusion

24. The appeal is dismissed and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR