



Appeal Decision

Site visit made on 20 August 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2024

Appeal Ref: APP/K0940/C/24/3340737

Lawton House, Long Marton, Appleby CA16 6BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Martyn Lee against an enforcement notice issued by Westmorland and Furness Council.
- The notice was issued on 8 February 2024.
- The breach of planning control as alleged in the notice is the unauthorised erection of a summerhouse/outbuilding and pergola type structure to the front elevation of Lawton House.
- The requirements of the notice are:
Remove the unauthorised structures, summerhouse / outhouse and pergola from the site.
- The period for compliance with the requirement is:
Four calendar weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

- At section '**5 What You Are Required to Do**', the deletion of the words:

"Remove the unauthorised structures, summerhouse/outhouse and pergola from the site at Lawton House, Long Marton, Appleby CA16 6BN."

and their substitution with the words:

"Remove the summerhouse / outbuilding and pergola type structure from the site at Lawton House, Long Marton, Appleby CA16 6BN."

And

- At section '**6 Time for Compliance**', the deletion of the words:

'four calendar weeks'

and their replacement with the words:

'eight calendar weeks'.

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.

Preliminary Matters – The Notice

3. There are inconsistencies in wording between the alleged breach of planning control set out on the notice and the notice's requirements, with particular regard to the descriptions given to the structures to which the notice relates and its requirements. As such, and subject to my conclusions in respect of the appeal on ground (f), I have varied the notice so that the wording of the requirement follows more closely and accurately that of the alleged breach of planning control.

The appeal on ground (b)

4. An appeal on ground (b) may be brought if it is felt that, on the balance of probabilities, the alleged breach of planning control set out in the notice has not in fact occurred. Because the content of section 174(2)(b) is worded in the past tense, the question is whether the breach had occurred by the date of issue of the notice. If the alleged structures had been on the site, an appeal on ground (b) cannot succeed simply on the basis that the structures may subsequently have been removed.
5. It is on this basis that the appellant has made the appeal under ground (b). Whilst there is no dispute between the parties regarding the summerhouse / outbuilding and that it had in fact been erected, and was indeed present at the time of my visit to the site, it was stated that the pergola 'is no longer on the site'.
6. Nevertheless, it is not disputed that a pergola-type structure was present at the appeal site, or that it was present at the time of the service of the notice. Other than the appellant's statement that it has since been removed, no further evidence has been submitted to otherwise dispute its previous presence on site, whilst the summerhouse / outbuilding element of the alleged breach remains in place. The appeal on ground (b) must therefore fail.

The appeal on ground (a)

Main Issue

7. The main issue is the effect of the summerhouse / outbuilding on the character and appearance of the appeal property and the surrounding area.

Reasons

8. The street along which the appeal property is located is a pleasant residential village lane. The houses, of varying scales and forms, are generally set back from the roadside behind grass verges, with low stone garden walls and pleasant, open front gardens. There is a general sense of openness and spaciousness along the lane.
9. The appeal property itself is typical of this layout. A detached house, lower than those on either side of it, is set behind a low stone garden wall with metal railings atop. The front garden of the appeal property is laid to a mix of paving and artificial grass, within which the summerhouse / outbuilding is sited. Placed on a stone and concrete plinth the structure stands to the front of, but detached from, the property's front elevation; elevated above the property's ground floor level but below the road level to the front.

10. The outbuilding is a modest-sized shed-like structure. It has glazed elements on both side elevations and is open-fronted under an overhanging, slate hung roof. Whilst not particularly large, it is nevertheless noticeable within its open garden setting in an area otherwise absent of sheds and outbuildings in front gardens.
11. Although the outbuilding is set back from the roadside and below road level, it nevertheless has a significant presence at the front of the property. This is principally because it is in an elevated position relative to the ground floor level of the house, but also due to the appeal property's otherwise squat proportions and modest height. Thus, its physical presence and impact on the house is exacerbated, even if it is not a particularly strident feature directly at the roadside.
12. The appeal property may not be listed, and may not lie within a conservation area, but it nevertheless makes a positive contribution to the character and appearance of the surrounding area, as well as being a pleasantly proportioned and attractive building in its own right. Because of the relative differences in ground levels, the outbuilding effectively obscures much of the right-hand side of the building at ground floor level and, because of its bulky slate roof, also partly at first floor level. Although the glazed elements on the side elevations enables limited views through the structure, its size and solid slate roof make it an intrusive and incongruous feature at the front of the house.
13. The pergola-type structure, whilst not present at the time of my visit having already been dismantled, was nevertheless part of the notice's target. As an appeal on ground (a) has been made it also therefore falls to be considered as part of the application for planning permission that is deemed to have been made under the ground (a) appeal even though it is no longer present on site.
14. Although it was not possible for me to observe the pergola-type structure, photographs submitted with the appeal submissions show it in place at the front corner of the garden area, adjacent to the roadside wall. Although a much smaller structure overall than the outbuilding, unlike that outbuilding it was situated at the front corner of the garden, adjacent to the front garden walls and railings and, as a consequence in a more prominent location. Given the sense of spaciousness and openness that is otherwise present along this part of the lane, a structure of that nature in this location would be harmful and disruptive to the character and appearance of the lane, particularly in combination within the summerhouse / outbuilding that the notice also seeks to attack.
15. Lawton House does not benefit from outdoor private amenity space at the rear of the property. Instead, its only such outdoor area is at the front of the property. The appellant has made efforts to make this space usable and durable, with an outdoor seating area, landscaping and artificial grass surface. The outbuilding is, the appellant states, a continuation of this desire, arising in part from the COVID-19 related lockdown period and a desire to have a usable, covered outdoor space.
16. I have sympathy with the appellant's predicament regarding the availability and location of outdoor space associated with the appeal property, and this is something to which I have given careful consideration and considerable weight. However, the particular summerhouse / outbuilding that the appellant

seeks to retain, and the pergola-type structures also within the scope of the appeal on ground (a), in these particular locations, give rise to an unacceptable and harmful effect upon the character and appearance of the appeal property and surrounding area.

17. For these reasons, the appeal scheme is contrary to Policies DEV5 and ENV10 of the Eden Local Plan 2014-2032 (ELP). Together, these policies set out the Council's approach to supporting high quality design which reflects local distinctiveness. Amongst other things, new development will be required, to reflect existing street scene through the use of appropriate scale, mass and layout and shows a clear understanding of the form and character of the district's built environment. Schemes will be expected to complement and enhance the existing area and great weight will be given to the conservation and enhancement of the historic environment, heritage assets and their setting which contribute to local distinctiveness.
18. Although the appeal site is not a listed building, nor lies within a Conservation Area, the neighbouring house and forecourt walls, piers and railings at Saunder House are grade II listed. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the listed building or its setting.
19. The open garden frontages behind the low stone walls and, as in the case of the appeal property and Saunder House, railings, contribute to the character and appearance of the street. The presence of the summerhouse / outbuilding within this setting causes harm thereto, in addition to that caused to the character and appearance of the appeal property and surrounding area. The effect of the appeal scheme therefore is to neither conserve nor enhance the setting of the adjacent listed structures, albeit that the harm arising would be less than substantial.
20. Where less than substantial harm to the significance of a heritage asset arises, this should be assessed against the public benefits of the scheme. The summerhouse / outbuilding provides a covered outdoor space for the appellant's family which is a private, rather than public, benefit. No other public benefits have been advanced and, thus, I conclude that there are no public benefits arising from the appeal scheme to outweigh the less than substantial harm to the setting of the adjacent listed building that I have identified.
21. An attempt has been made to compare the effect of the summerhouse / outbuilding on the setting of the listed building and its walls, piers and railings with a means of enclosure that could be erected under permitted development¹ provisions. However, I have no further information before me as to whether or not permitted development rights exist in this location, or the type and nature of the means of enclosure to which the appellant refers. This is not therefore a matter that I give significant weight to.

Other Matters

22. Other alternatives and amendments to the summerhouse / outbuilding as built have been suggested in very vague and broad terms. These include different locations for the building, revisions to materials and enhancement of existing

¹ Schedule 2, Part 2, Class A – The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

boundary planting around the front garden. However, insufficient evidence regarding these alternatives has been put before me and thus I am not persuaded that they may reasonably be considered as 'part of those matters' for the purposes of section 177(1) of the Act.

23. I have also noted the appellant's submissions in respect of the support received in connection with the appeal scheme and previous planning application schemes and the nature of the complaints received regarding the appeal scheme. The volume of representations in support of, or against, a scheme weigh neither in support of it nor against it, whilst I have considered the representations received, and the appeal as a whole, on their respective planning merits.

Conclusion on the appeal on ground (a)

24. For the reasons set out, and having considered all other material considerations, I conclude that the appeal on ground (a) should be dismissed.

The appeal on ground (f)

25. An appeal under ground (f) may be brought if it is felt 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. In this instance, the notice requires the removal of the summerhouse / outhouse and pergola from the appeal site. This is consistent with remedying the breach of planning control in accordance with s173(4)(a) of the Act, and not to remedy injury to amenity.
26. However, in full, the notice's requirement is to 'remove the unauthorised structures, summerhouse / outhouse and pergola' from the site. What the 'unauthorised structures' are is not explained and there are no other alleged breaches of planning control set out in the allegation beyond that of the unauthorised erection of a summerhouse / outbuilding and pergola type structure.
27. The appellant has stated an intention to repurpose some of the materials and constituent parts of the summerhouse / outbuilding and pergola-type structures elsewhere within the appeal property's garden. As such, whilst the appellant does not dispute the requirement for the removal of the summerhouse / outhouse, the appellant considers that the notice's requirement to 'remove the unauthorised structures' would prevent the materials from the summerhouse / outhouse and pergola from being repurposed, and therefore exceed what is necessary to remedy the breach.
28. The Council consider that it is not unusual for an enforcement notice to require complete removal of unauthorised development to avoid parts of its being stored or deposited elsewhere within the site. However, that is not what the notice's requirements state. Rather than requiring the removal of any 'resulting debris', 'waste' or 'materials', the notice instead refers to the removal of unauthorised structures, without making clear what those unauthorised structures might be or that they are part of the alleged breach of planning control.
29. Thus, I agree with the appellant that to remove 'the unauthorised structures' exceeds what is required to remedy the alleged breach of planning control,

that being the erection of a summerhouse / outbuilding and pergola-type structure, albeit not for the reasons set out by the appellant. As to the repurposing of materials, that is a matter for the appellant and Council to discuss between themselves, as indeed the Council's appeal submission indicates. The appeal on ground (f) succeeds to this extent for the reasons I have set out.

The appeal on ground (g)

30. The Council has sought to resist the appellant's pursuit of a longer period for compliance on the basis that, having first been brought to the Council's attention in July 2021, a sufficiently long period for its removal has already passed. However, regardless of the outcome of an appeal, an appellant is entitled to assume success on any ground.
31. The pergola-type structure has already been removed from the site and so the notice's compliance period essentially only relates to the removal of the summerhouse / outbuilding. Although it is not, in absolute terms, a particularly large structure and therefore unlikely to be particularly onerous to remove, I nevertheless accept that employment patterns and day-to-day activities can be a significant factor in carrying out works within a particular time period.
32. An extended period of 8 calendar weeks seems a reasonable adjustment therefore and I shall vary the notice accordingly. The appeal on ground (g) succeeds to this extent.

Conclusion

33. 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.

G Robbie

INSPECTOR