



Appeal Decisions

Site visit made on 18 June 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal A Ref: APP/P4415/C/23/3320285

Appeal B Ref: APP/P4415/C/23/3320286

Land at Dale House, Lindrick Dale, Lindrick, Rotherham S81 8BB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Mark Bignell and Appeal B by Mrs Julie Bignell against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 13 March 2023.
 - The breach of planning control as alleged in the notice is the failure to comply with a condition imposed on planning permission ref RB2008/0283 granted on 31 March 2008.
 - The development to which the permission relates is the "Erection of a two storey dwellinghouse with dormer windows to rear at Dale House, Lindrick Dale, Lindrick, Rotherham".
 - The condition on question is no 4 which states that: "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no enlargement or other alteration to the dwelling hereby approved, or building or enclosure within its curtilage, shall take place without the prior written approval of the Local Planning Authority".
 - The notice alleges that the condition has not been complied with by way of the erection of a timber built single storey extension.
 - The requirements of the notice are to: Demolish the timber built single storey extension and remove from the land all building materials and rubble arising from compliance with the requirement.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), 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.
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - In section 1 the deletion of the words "171A(1)(b)" and substitute the words "171A(1)(a)".
 - In section 3 the deletion of the words "without the required planning permission, the breach of condition 4 of planning permission RB2008/0283 by way of".
2. Subject to the above corrections, the appeals are allowed and the enforcement notice is quashed.

The Notice

3. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act"), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
4. The notice was issued under section 171A(1)(b) of the 1990 Act, and the alleged breach of planning control was the failure to comply with condition 4 of planning permission RB2008/0283, by way of the erection of a timber built single storey extension. The condition is displayed in the banner header above. I wrote to the parties expressing my concerns regarding the drafting of the allegation in the notice as development in breach of a condition. Both parties provided comments in response which I have taken into account.
5. Section 171B of the Act sets out the time periods for taking enforcement action. In respect of notices issued before 25 April 2024, S171B(1) specifies that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action can be taken after a period of four years beginning with the date on which the operations were substantially completed.
6. S171B(2) specifies that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Section 171B(3) specifies that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
7. The effect of article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (and its predecessor provisions) ("the GPDO"), coupled with condition 4 of planning permission RB2008/0283, is to withdraw any planning permission for the enlargement or other alteration to the dwelling or for any building or enclosure within its curtilage, which would otherwise be permitted by article 3(1) of the GPDO.
8. The Council considers that the single storey timber extension represents a failure to comply with condition 4, irrespective of whether or not the extension was permitted under the GPDO. I do not disagree, however this does not alter the fact that the extension is also operational development in its own right. Condition 4 can only take away a pre-existing right to build and withdraw any planning permission which may have existed by virtue of article 3(1) of the GPDO. To my mind, the development therefore sits squarely within section 171B(1), being a breach of planning control consisting in the carrying out, without planning permission, of building operations.
9. There are similarities here with the case of *Arun*¹, where it was held that the four year limit in section 171B(2) applies where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use.

¹ FSS v Arun DC & Brown [2006] EWCA Civ 1172; [2007] JPL 237

10. At paragraph 27 of the *Arun* judgement, Lord Justice Auld said *"....it would be illogical for there to be a different period for enforcement, depending on whether the breach of planning control within the meaning of section 171A(1) involving a change of use involves a failure to comply with a condition as well as or instead of "development without the required planning permission". Similarly, it would be illogical for the time bar to depend, in such circumstance, according to whether the local planning authority formulates its enforcement notices on the basis of a breach of planning control constituted by development without the required planning permission or as a breach of condition."*
11. I acknowledge that *Arun* is distinguishable from this case in that it related to the change of use of a permitted extension by using it as a separate dwellinghouse in breach of a condition. Nevertheless, there are parallels with this case where operational development has been carried out without planning permission and in breach of a condition.
12. Indeed, when applying the findings of Lord Justice Auld, in my view it would also be illogical for there to be a different period for taking enforcement action depending on whether the breach of planning control within the meaning of section 171A(1) involving operational development involves a failure to comply with a condition as well or instead of "development without the required planning permission". The same also applies for the relevant time period being dependant on whether the local planning authority chose to issue its enforcement notice on the basis of a breach of planning control constituted by development without the required planning permission or as a breach of condition.
13. The current drafting of the allegation as development in breach of condition also has ramifications for the ground (a) appeal, as it would result in the deemed planning application comprising an application merely for the construction of a two-storey dwellinghouse with dormer windows to the rear (namely the development approved under planning permission RB2008/0283) without complying with condition 4. This could not in itself have the effect of retrospectively authorising an extension which would not have constituted permitted development at the time of its construction, and such rights cannot be claimed retrospectively².
14. In view of the above, I find that the timber built single storey extension is better described as an allegation of operational development carried out without planning permission, rather than development in breach of a condition. The parties have had opportunity to comment on this matter and, whilst the Council maintain that the development is also in breach of condition 4, it has not been contested that the extension itself comprises operational development. The parties also agree that the extension was substantially completed more than four years prior to the notice being issued. I shall correct the notice accordingly.

Appeals A and B on ground (c)

15. An appeal on ground (c) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters (if they occurred) do not constitute a breach of planning control.

² R (Watts) v SSETR and Hammersmith & Fulham LBC [2002] JPL 1473

16. The corrected allegation now refers to “the erection of a timber built single storey extension”. Condition 4 of planning permission RB2008/0283 expressly prohibits the “*enlargement or other alteration to the dwelling hereby approved*” without the prior written approval of the local planning authority. There is no dispute between the parties that planning permission has not been obtained for the extension.
17. Much of the appellants case is that condition 4 is not applicable, as due to a variety of deviations and departures from the approved plans, the dwelling constructed on site is not that approved under RB2008/0283. It is argued that RB2008/0283 was not implemented, and the existing dwelling was constructed without planning permission and subsequently became lawful through the passage of time in around 2013.
18. However, the appellant concedes that the extension does not meet the various conditions and limitations as set out under Class A, Part 1, of Schedule 2 of the GPDO and therefore does not comprise permitted development. I concur with this view and agree that the extension would not have comprised permitted development at the time of its erection.
19. Consequently, even in the absence of condition 4, the single storey extension does not comprise permitted development and planning permission is required. As the necessary planning permission has not been obtained the matters alleged in the notice constitute a breach of planning control. The appeals on ground (c) therefore fail.

Appeals A and B on ground (d)

20. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. The consequence of correcting the allegation is that the time limit for taking enforcement action set out in section 171B of the Act is reduced to four years under section 171B(1), rather than the period of ten years recited in the notice which is derived from the present characterisation of the alleged breach as “any other breach” under section 171B(3). As the notice was issued on the 13 March 2023, the relevant date is now the 13 March 2019.
21. The appellants state that the timber built single storey extension was completed in August 2014 and is therefore immune from enforcement action. The Council accepts that the development has been substantially completed for in excess of four years and that consequently no enforcement action can be taken due to the passage of time.
22. Accordingly, the appeals on ground (d) succeed and the enforcement notice as corrected is quashed.

Conclusion

23. For the reasons given above, I conclude that the appeals succeed on ground (d). The enforcement notice is therefore quashed. In these circumstances, the appeals on grounds (a), and (g) do not fall to be considered.

David Jones

INSPECTOR