



Appeal Decision

Site visit made on 24 September 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/R3515/C/22/3306442

Land at 28 Churchill Avenue, Ipswich, Suffolk IP4 5DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Mr Rob Brow against an enforcement notice issued by Ipswich Borough Council.
- The notice was issued on 9 August 2022.
- The breach of planning control as alleged in the notice is:

Without planning permission, the erection of a large timber outbuilding at 28 Churchill Avenue Ipswich IP4 5DS, positioned less than 1 metre from the neighbouring boundary, in the left-hand corner of the garden as marked with a blue circle on the attached plan. Permitted development rights allow an overall height of 2.50 metres for a structure of this description and positioning, but our investigations have confirmed this currently measures 2.67 metres, exceeding the permissible height by 17 centimetres, therefore requiring planning permission.

Without planning permission, a change of use of the land at 28 Churchill Avenue Ipswich IP4 5DS, as edged in red on the attached plan, has occurred whereby the timber outbuilding marked by the blue circle, is being used for short term residential rental purpose and is regularly advertised on a property rental platform for such use. This building has been separated from the main house by a high fence and an entrance gate has been added, giving the appearance of a separate dwelling, and this is marketed as 'Churchill Lodge'.
- The requirements of the notice are:
 - Remove the outbuilding from the land or reduce the height to 2.50 metres to retain it in accordance with permitted development rights.
 - Cease using the outbuilding 'Churchill Lodge' for commercial rental purposes.
 - Apply for planning permission in an attempt to retain the outbuilding at the current height of 2.67m and for a change of use of the land from residential to commercial use to allow for the continued commercial rental of the outbuilding.
- The period for compliance with the requirements is: 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 ("the DPA").

Summary of decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990 which, among other things, requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control.
2. In this case the alleged breach is twofold. In relation to the erection of the building, the words "Permitted development rights allow" onwards are a misdescription as they are reasons for issuing the Notice rather than a description of the breach. They are also repeated in general terms in Section 4 of the Notice.
3. In relation to the use of the land, the words "and is regularly advertised" onwards are similarly explanatory and do not form part of the breach of planning control. In each case, no injustice would be caused to either party were I to correct these misdescriptions by deleting the unnecessary words. In addition, only a material change of use is development for the purposes of the Act. For clarity, I shall therefore correct the second part of the breach of planning control by inserting the word "material" before the words 'change of use'. No injustice is caused to either party in doing so.
4. In respect of use, the Notice also refers to the entire land parcel outlined in red. In doing so, it alleges short-term letting of the entire parcel, which includes the dwelling at 28 Churchill Avenue, in addition to the outbuilding. Read as a whole, the Notice is clearly targeted at the outbuilding and the area of land fenced off for use with it, rather than the dwelling at 28 Churchill Avenue. The red line defining the extent of the Land subject to the Notice should reflect that, and should therefore be reduced to the fenced area containing the building. For clarity, having limited the site area to that associated with the outbuilding, the second requirement should be amended to refer to use of the Land. No injustice would occur to either party were I to amend and vary the Notice accordingly.
5. The third requirement is that an application for planning permission be made to retain the outbuilding at its current height and its use for commercial rentals. It is unreasonable to require recipients of the Notice to apply for planning permission for the use which has occurred, whether through an appeal on ground (a) or otherwise. That is particularly the case while at the same time requiring the use to cease and the building to be removed or reduced in height. Furthermore, since the outcome of any such application cannot be certain, requiring an application for planning permission would neither remedy the breach nor the injury to amenity caused by the breach of planning control. It would therefore not accord with Section 173 (3) and (4) of the Act. The appellant has had the opportunity to seek planning permission for the development occurring through the appeal process, and there would be no injustice to either party were I to delete this requirement.

The appeal on ground (a)/the DPA

Reasons

6. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters, or part of the matters, alleged in the breach of planning control in the Notice, as corrected.

7. The appellant's case on ground (a) is limited to the retention of the building, for use as an outbuilding to the dwelling. He does not seek planning permission for use for short term residential letting.
8. The Council does not object to retention of the building as an outbuilding, subject to the cessation of short-term letting and a planning condition requiring removal of the kitchen and shower/WC, the fence dividing the building from the host dwelling, and the independent access via a gate onto the road. The appellant has not objected to such a condition.
9. The building is a relatively modest size, and subject to resumption of use of the outbuilding as an ancillary element of the use of the dwelling at 28 Churchill Avenue, a building of the same floor area with a marginally lower height could be erected in any case for a purpose incidental to the enjoyment of the dwellinghouse as 'permitted development'¹. It is only marginally visible from the street, and generally respects the character, scale and design of the dwelling, and the townscape of the surrounding area. Being located close to the gable end wall of the adjacent dwelling, with eaves only marginally higher than the boundary fence, it does not harm the living conditions of neighbouring residents.
10. Retention of the building reduces the rear garden space to 62sqm, which is lower than the 75sqm sought by Policy DM7 of the Ipswich Borough Council Local Plan (Core Strategy and Policies Development Plan Document Review) (2022) ("LP"). However, subject to removal of the kitchen and bathroom from the relatively small building, it could make a meaningful contribution to the use of the remaining outdoor space, through the storage of outdoor furniture and equipment, or for cycles.
11. Removal of the building in compliance with the Notice would have resulted in removal of the kitchen and shower/WC in any event. Should the building be retained, retention of the kitchen and shower/WC would limit the building's utility as an outbuilding to the dwelling at 28 Churchill Avenue in circumstances that would reduce the private outdoor open space available to residents to below the local standard. Their removal is therefore a necessary part of the justification for retention of the building, and would be less onerous to the appellant than removal of the building.
12. In relation to the fence and gate, neither were explicitly referenced in the breach of planning control alleged. At the same time, the fence and gate were works that facilitated the material change of use to short term residential rental use, and are therefore part of the matters constituting the breach of planning control.
13. The Notice did not require the removal of the fence and gate in association with the demolition of the building. However, the case for the retention of the building relies on its use in association with the dwelling at 28 Churchill Avenue. Without direct physical access that case is substantially weakened, and without such a condition planning permission should not be granted for the building. Removal of the dividing fence and gate onto the road would therefore facilitate retention of the building, and a condition requiring it would be less onerous to the appellant than the building's removal.

¹ Under Part 1 Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

14. I note the concern of local residents that retention of the building may result in letting of the outbuilding in future. However, the Notice will remain in force insofar as it relates to the use for short-term residential letting, as compliance with an enforcement notice does not discharge the notice.
15. Therefore, the retention of the building would accord with Policy DM16 of the LP. Despite the conflict with Policy DM7, it would accord overall with LP policies and there are no other material considerations that require a decision to be made other than in accordance with the development plan.

Conditions

16. Considering the condition suggested by the Council, I have had regard to the approach in the Framework and the Planning Practice Guidance and have amended the phrasing proposed accordingly, without altering its fundamental aim.
17. The condition is imposed to ensure the development is made acceptable in planning terms, for the reasons described above. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the removal of the kitchen and shower/WC, the dividing fence and gate before the development takes place. The condition will ensure the development can be enforced against if the requirements are not met.

Conclusion on ground (a)/the DPA

18. The appeal on ground (a) therefore succeeds in relation to the retention of the building, and the DPA is granted to that extent.

The appeal on ground (g)

19. Appeals on ground (g) are made on the basis that the time period for compliance with the requirements of the Notice falls short of what should reasonably be allowed.
20. The compliance period of 28 days is a short period for a letting property where bookings may have been made. The Council and the appellant agree that a period of 3 months would be more reasonable. The 28 day period falls short of what should reasonably be allowed, and I shall vary the Notice accordingly.
21. The appeal on ground (g) therefore succeeds.

Conclusion

22. For the reasons given above I conclude the appeal should succeed in part only, and I will grant planning permission for the erection of a large timber outbuilding at 28 Churchill Avenue, Ipswich IP4 5DS, positioned less than 1 metre from the neighbouring boundary, in the left-hand corner of the garden as marked with a blue circle on the plan attached to the Notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Decision

23. It is directed that the enforcement notice is corrected by:

- In Section 3: the deletion of the words:
"Permitted development rights allow an overall height of 2.50 metres for a structure of this description and positioning, but our investigations have confirmed this currently measures 2.67 metres, exceeding the permissible height by 17 centimetres, therefore requiring planning permission."
- In Section 3: the addition of the word, "material" before the words, 'change of use', and the deletion of the words:
"and is regularly advertised on a property rental platform for such use. This building has been separated from the main house by a high fence and an entrance gate has been added, giving the appearance of a separate dwelling, and this is marketed as 'Churchill Lodge'."
- The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

24. And varied by:

- In Section 5: the deletion of the words: "Cease using the outbuilding 'Churchill Lodge' for commercial rental purposes", and the substitution of the words "Cease using the Land for short term residential rental use".
- In Section 5: the deletion of the words: "Apply for planning permission in an attempt to retain the outbuilding at the current height of 2.67m and for a change of use of the land from residential to commercial use to allow for the continued commercial rental of the outbuilding."
- In Section 6: the deletion of the words: "28 days" and their substitution with the words "3 months".

25. Subject to the corrections and variations, the appeal is allowed insofar as it relates to the erection of a large timber outbuilding at 28 Churchill Avenue, Ipswich IP4 5DS positioned less than 1 metre from the neighbouring boundary in the left-hand corner of the garden as marked with a blue circle on the plan attached below. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the erection of a large timber outbuilding at 28 Churchill Avenue, Ipswich IP4 5DS positioned less than 1 metre from the neighbouring boundary in the left-hand corner of the garden as marked with a blue circle on the plan attached below subject to the following condition:

1. The outbuilding hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 28 days of the date of failure to:

Remove the fence which sub-divides the rear curtilage of No.28 Churchill Avenue, the pedestrian gate within the east facing boundary fence, and the kitchen and shower/WC within the outbuilding within 3 months of the date of this decision.

In the event of a legal challenge to this decision, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

26. The appeal is dismissed, and the enforcement notice is upheld as corrected and varied insofar as it relates to the material change of use of the Land outlined in red on the attached plan to short-term residential letting. Planning permission is refused in respect of the material change of use of the land edged in red on the attached plan to short-term residential rental use at 28 Churchill Avenue, Ipswich IP4 5DS on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Peter White

INSPECTOR

The plan referred to in my decision.

Peter White BA(Hons) MA DipTP MRTPI

Appeal Ref: APP/R3515/C/22/3306442

Land at 28 Churchill Avenue, Ipswich, Suffolk IP4 5DS

Not to scale

