



Appeal Decisions

Site visit made on 7 January 2025

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Appeal Refs APP/P4415/C/24/3353534 & APP/P4415/C/24/3353535

Land and property at 254 East Bawtry Road, Rotherham S60 3LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mr Nazakat Hussain (APP/P4415/C/24/3353534) and Miss Sonia Shaheen (APP/P4415/C/24/3353535) against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 11 September 2024.
 - The breach of planning control as alleged in the notice is without the required planning permission, the erection of an outbuilding on land forward of a wall forming the principal elevation of the original dwellinghouse.
 - The requirements of the notice are to demolish the outbuilding and remove all materials used in its construction permanently from the site.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The appeals are dismissed.

Grounds (b) and (c)

2. Appeals on ground (b) are concerned with whether the matter stated in the enforcement notice has actually occurred. If it did occur, ground (c) raises the question of whether it constitutes a breach of planning control. The appellants' case on these matters is interrelated, and I deal with these two grounds together.
3. The notice alleges the erection of an outbuilding on land forward of a wall forming the principal elevation of the original dwellinghouse. There is no doubt that a building has been constructed (albeit the building was not complete when I saw it or when the notice was issued). I am told that the building is for use by disabled family members to store mobility aids and carry out rehabilitation exercises. It has the appearance of an outbuilding, and 'outbuilding' seems a reasonable label for it, even in its unfinished state.
4. The allegation in the notice includes the wording 'on land forward of a wall forming the principal elevation of the original dwellinghouse'. The question of whether it is correctly described as such is a disputed matter and is central to grounds (b) and (c). If the building is not 'on land forward of a wall forming the principal elevation of the original dwellinghouse', then it is wrongly described in the notice and, the appellant says, would be permitted development.
5. Class E of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* permits, subject to certain limitations, any building required for a purpose incidental to the enjoyment of the

dwellinghouse as such. The dispute in this case concerns the limitation set out at E.1(c), which establishes that development is not permitted if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. This stems in part from disagreement about which elevation of the building is the principal one. The house stands at an angle to the road, so that both the southern and eastern elevations face towards it at an angle.

6. The Council says that the eastern elevation is the principal elevation. If that is the case, there is no doubt that the appeal building is forward of it, since the building is situated directly between that elevation and the road.
7. But even if I accept the appellant's view that the southern elevation is the principal elevation, there is still not compliance with E.1(c), because the building is forward of that elevation too. In reaching that view, I have taken account of the Government's *Permitted development rights for householders Technical Guidance*, which has been produced to assist in deciding matters relating to permitted development rights. The guidance includes diagrams to show how E.1(c) should be assessed. These show that development is not permitted under Class E if any part of the building is in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house.
8. Although the diagrams do not precisely resemble this corner plot, the principles can be applied, and the pointed southern end of the outbuilding would be in front of a hypothetical line drawn through the southern elevation of the house. It is clear, therefore, that the outbuilding is located forward of the principal elevation of the dwellinghouse, regardless of whether that is the southern or eastern elevation, and is not development permitted by Class E. It also follows from this that the building is correctly described in the notice.
9. I appreciate that the Council initially took the view that the outbuilding was permitted development, prior to revising its view and issuing the enforcement notice. That is, of course, extremely unfortunate for the appellant, but it does not alter my assessment of how the relevant permitted development provisions apply in this case.
10. For these reasons, the appeals fail on grounds (b) and (c).

Ground (f)

11. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the allegation concerns the construction of a building and the notice requires its removal. This is consistent with remedying the breach of planning control in accordance with s174(4)(a). Consequently, while I appreciate that the notice requires the undoing of a significant amount of work, I do not regard the requirement as excessive.
12. The appellants say that the building is built to a high standard and is needed for use by disabled family members. However, there is no appeal on ground (a) and no deemed planning application. Consequently, the planning merits of the development are not before me. Regardless of the unfortunate background to this case, the breach of planning control is the erection of a building, and the removal

of that building is an appropriate requirement in my view. Accordingly, the appeals on ground (f) fail.

Other Matters

13. The appellants refer to section 97 of the Act, which is concerned with powers to revoke planning permission. However, it is clear that the Council has not granted any planning permission. Rather, it gave an initial view that planning permission was not required. Thus, there was no permission to revoke and section 97 is of no relevance.
14. The appellants refer to various pieces of caselaw, but I have not been provided with full details or extracts of the judgements and their relevance to this appeal is not explained. Consequently, there is nothing before me to suggest that any decision of the courts would lead me to any different decision on the facts of this case.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Peter Willows

INSPECTOR