



Appeal Decision

Site visit made on 8 January 2025

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 5th February 2025

Appeal Ref: APP/A1530/C/23/3320191

226 Old Heath Road, Colchester CO2 8AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Libby Johnston against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 14 March 2023.
- The breach of planning control as alleged in the notice is 'Without the benefit of planning permission, the construction of a wooden outbuilding located on the rear boundary of the property, and the erection of a wooden bike store forward of the principal elevation ("The Activity") (For the avoidance of doubt, this is the outbuilding and bike store shown on the photographs attached to this Notice)'.
- The requirements of the notice are
 - (i) Demolish/dismantle/remove the wooden outbuilding located on the rear boundary of the property
 - (ii) Demolish/dismantle/remove the wooden bike store located forward of the principal elevation.
 - (iii) Leave the land in a clean and tidy condition
- The period of compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f), (g) of the Town and Country Planning Act 1990 (the Act) (as amended).

Decision

1. It is directed that the enforcement notice is varied by:
 - (i) Deleting requirement (iii) in full which states 'Leave the land in a clean and tidy condition'
 - (ii) Deleting the words 'three calendar months from the date this notice take effect' from paragraph 6 of the notice and replacing it with 'the period of compliance for requirement (i) is 6 months and the period of compliance for requirement (ii) is 4 months'.
2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant has included an appeal under ground (b). An appeal under ground (b) is that the matters alleged in the notice have not occurred. However, the appellant's arguments largely relate to ground (c). As the Council has responded to the appellant's arguments, I can deal with these matters by addressing grounds (b) and (c) together without causing any injustice to either party.
4. There is no ground (a) appeal before me which would have included an application for planning permission. The planning considerations including the uses and the

merits of the development, comparisons with other outbuildings or bike stores are not therefore matters that fall within my remit in determining this appeal.

The Notice

5. Requirements should not be based on potentially subjective judgements. The third requirement states 'Leave the land in a clean and tidy condition.' which is open to interpretation and will be deleted. The deletion does not cause injustice to any party as the remaining requirements remedy the breach in the event of the notice being upheld. I will vary the notice accordingly.

The appeals under grounds (b) and (c)

6. An appeal under ground (b) is that the matters alleged in the notice have not occurred. The onus of proof is on the appellant on a balance of probabilities to make out her case. The matters alleged are 'the construction of an outbuilding and the erection of a bike store.' The appellant refers to erecting the outbuilding herself with a neighbour and some contractors and the bike store being professionally built. On the evidence before me, on the balance of probabilities, I do find that the matters alleged namely the construction of an outbuilding and the erection of a bike store have occurred. The appeal under ground (b) therefore fails.
7. An appeal under ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. As with ground (b), the onus of proof is on the appellant on a balance of probabilities to show that there has not been a breach. For example, the appellant needs to demonstrate that development has not occurred for the purposes of the Act, that the matters alleged in the notice have been granted planning permission or that they constitute 'permitted development' which means that express planning permission is not required.
8. The crux of the appellant's argument under ground (c) is that she does not need planning permission for the development when there are other structures in the surrounding area which do not have planning permission. However, an appeal under ground (c) relates solely to the development before me and does not involve comparisons with other outbuildings or structures.
9. Planning permission is required for development which includes the carrying out of building operations. A 'building' is defined in section 336(1) of the Act as including 'any structure or erection and any part of a building'. Other than the reference to other developments, the appellant has not indicated why the outbuilding and bike store are not structures or buildings which fall within the definition of development requiring planning permission. The existing outbuilding is described as a replacing a previous outbuilding. However, that does not exclude the new building, which is taller and not of the same design as the previous building, from the provisions of the Act when assessing if planning permission is required or if permitted development rights apply.
10. Whilst there are permitted development rights for structures within the curtilage of a dwelling house ¹ they are subject to conditions and limitations. The Council has addressed the issue of permitted development rights in its evidence. The location of the bike store at the front of the dwelling house means that it does not fall within permitted development rights irrespective of its size. There are permitted

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

development rights for buildings to the rear of dwellings subject to limitations and exclusions. An outbuilding which is located within 2 metres of the boundary falls outside permitted development rights if it exceeds a height of 2.5 metres. The outbuilding is clearly within 2 metres of the boundary of the appeal site. Whilst the parties disagree as to the height of the outbuilding, it is at least 3.6 metres which is an excess of 2.5 metres. The outbuilding does not therefore fall within permitted development rights.

11. There is no express planning permission for the outbuilding or the bike store and the appellant has not shown that any of the development falls within permitted development rights. Development has taken place without planning permission and a breach of planning control has therefore occurred. The appeal under ground (c) therefore fails.

The appeal under ground (f)

12. Section 174(2)(f) of the Act states that an appeal may be made on the ground 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.
13. As requirements (i) and (ii) are to remove the outbuilding and the bike store, the purpose of the notice is to remedy the breach. Whilst the appellant considers that the service of the notice was excessive, that is not part of a ground (f) appeal which relates specifically to the requirements of the notice.
14. As the appellant has not advanced any arguments under this ground as to why the requirements are excessive and the purpose of the notice is to remedy the breach, the requirements to remove are not excessive. The appeal under ground (f) therefore fails.

The appeal under ground (g)

15. An appeal under ground (g) relates to the period for compliance which is 3 months. The Council has indicated that it would not object to allowing further time for compliance but has not specified how long or distinguished between the outbuilding and the bike store.
16. The appellant has referred to the need for reasonable adjustments to be made due to her personal circumstances and the special needs of her family. These are not matters that I can consider under grounds (b)(c) and (f) due to the limited nature of those grounds. However, ground (g) includes an assessment of what is reasonable and proportionate whilst balancing the public interest in securing compliance.
17. The appellant refers to her family need for accessible bike storage. A slightly longer period of 4 months would allow time to investigate other options for bike storage whilst also arranging for the removal of the bike store from the front of the dwelling.
18. Removing the outbuilding may take longer than 3 months and it is not clear if the appellant would carry out that work herself or not. A period of 6 months would allow the appellant to carry out the required works or to find and instruct contractors whilst considering what options are available to her with regard to outside structures having regard to her family's needs. I will vary the period of

compliance to 4 months for the bike store and 6 months for the outbuilding. The appeal under ground (g) succeeds to the extent.

Other Matters

19. The appellant states that she had less than 28 days to lodge her appeal due to the postal strike and other commitments. Nevertheless, an appeal was lodged in time with supporting information and the appellant has been in contact with local councillors and has also spoken to her local law clinic for advice. She was also allowed to add a ground (c) appeal at a later date.
20. The conduct of the investigation before issuing the notice and the decision to issue a notice are matters between the appellant and the Council. The Council also deals with the administration and payment of fees that are due in respect of any planning application.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

E Griffin

INSPECTOR