



Appeal Decisions

Site visit made on 13 December 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 February 2025

Appeal A Ref: APP/K1935/C/24/3341301

Appeal B Ref: APP/K1935/C/24/3341302

Car Park to the side of 8 Aintree Way, Stevenage, SG1 5RF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeals are made by Mr Larry Urbanowski (Appeal A) and Mrs Sylvia Urbanowski (Appeal B) against an enforcement notice issued by Stevenage Borough Council.
- The notice was issued on 28 February 2024.
- The breach of planning control as alleged in the notice is the erection of a structure on the Land REASONS FOR ISSUING THIS NOTICE The unauthorised structure erected is an unsympathetic and incongruous form of development due to the fact there are no other structures which are used for the parking of a motor-vehicle within the immediate surrounding area in relation to communal parking areas which in combination with its overall size, scale and design is deemed to be having a detrimental impact on the visual amenities of this part of Aintree Way. As such, the structure which has been erected is deemed not to be in accordance with Policies GD1 and SP8 of the adopted Stevenage Borough Local Plan (2019), the Council's Design Guide SPD (2023), paragraphs 131, 135 and 139 of the NPPF (2023) and PPG.
- The requirements of the notice are to:-
 - i) Remove the structure located on the Land.
 - ii) Remove from the Land all building materials arising from compliance with requirement (i) above, and to restore the Land to its condition before the breach took place following the removal of the unauthorised structure.
- The period for compliance with the requirements is: 24 weeks from the date the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Act.

Decisions

1. It is directed that the enforcement notice is corrected by:-
 - i) The deletion of the words from paragraph 3 "REASONS FOR ISSUING THIS NOTICE The unauthorised structure erected is an unsympathetic and incongruous form of development due to the fact there are no other structures which are used for the parking of a motor-vehicle within the immediate surrounding area in relation to communal parking areas which in combination with its overall size, scale and design is deemed to be having a detrimental impact on the visual amenities of this part of Aintree Way. As such, the structure which has been erected is deemed not to be in accordance with Policies GD1 and SP8 of the adopted Stevenage Borough Local Plan (2019), the Council's Design Guide SPD (2023), paragraphs 131, 135 and 139 of the NPPF (2023) and PPG." and their substitution with the words "marked in red on the plan" so

that paragraph 3, The matters which appear to constitute the breach of planning control, reads “without planning permission, the erection of a structure on the Land marked in red on the plan”.

- ii) Paragraphs 4, 5 and 6 shall be renumbered as paragraphs 5, 6 and 7 respectively.
 - iii) A new paragraph 4 shall be substituted with the words “REASONS FOR ISSUING THIS NOTICE The unauthorised structure erected is an unsympathetic and incongruous form of development due to the fact there are no other structures which are used for the parking of a motor-vehicle within the immediate surrounding area in relation to communal parking areas which in combination with its overall size, scale and design is deemed to be having a detrimental impact on the visual amenities of this part of Aintree Way. As such, the structure which has been erected is deemed not to be in accordance with Policies GD1 and SP8 of the adopted Stevenage Borough Local Plan (2019), the Council’s Design Guide SPD (2023), paragraphs 131, 135 and 139 of the NPPF (2023) and PPG.”
2. Subject to the corrections above, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellants ticked the appeal form to indicate the appeal was made under ground (b), however, the appellants subsequently confirmed in writing that they wished to also appeal under ground (c). The Council has provided its comments in relation to grounds (b) and (c) and I have therefore determined the appeal on this basis.

Matters concerning the notice

4. An enforcement notice (“the Original Enforcement Notice”) was issued by the Council on the 14 October 2022. The Original Enforcement Notice was found on appeal to be a nullity and I have been provided with a copy of that appeal decision¹ relating to that notice. The Council consequently served a further enforcement notice (“the Enforcement Notice”) which is the subject of this appeal and which sought to rectify the errors identified by the previous Inspector.
5. At paragraph 3, the allegation is stated by the Council to be “without planning permission, the erection of a structure on the Land”. It is the Council’s case that the allegation should be amended to include the words ‘marked in red on the plan’ such that the allegation reads in its entirety “without planning permission, the erection of a structure on the Land marked in red on the plan”. The Enforcement Notice was accompanied by a plan which shows an area of the car park edged in red.
6. The car park to the side of 8 Aintree Way is a small area predominantly comprised of hardstanding and which is set out to include a number of car parking spaces, the access and manoeuvring space and areas of planting. Whilst there were a number of structures within this area at the time of my visit, the structure occupying the area edged in red on the plan attached to

¹ Appeal Decision APP/K1935/C/22/3310739

the notice was significantly larger in footprint and size than any other structure. It is open to me to correct any error or misdescription under section 176(1) of the Act provided that no injustice is caused to any party. In this instance, I am satisfied that it is sufficiently clear to those served with the notice which structure the notice refers to and therefore I consider that the notice can be corrected by inserting the words "marked in red on the plan" to the allegation without causing injustice to the appellant or the Council.

7. In addition, the Council also points to a formatting error which has led to the reasons for issuing the notice being included as a continuation of the allegation. Notwithstanding the error, the notice sets out with sufficient clarity what the allegation is and the reasons for issuing the notice and therefore a correction to notice is in order and would not cause any party to be injustice by this change. As a result, the remaining paragraphs would require to be re-numbered.

Ground (b)

8. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control, have not occurred. In a legal ground of appeal, the burden of proof is firmly on the appellant to make out their case, to the civil standard, which is the balance of probabilities.
9. The main thrust of the appellants' case under ground (b) is that the structure is not a permanent one and it can be easily removed. I therefore take the appellants' arguments to be that the structure does not constitute 'development' within the meaning of section 55 of the Act. However, this is a matter which should be considered under ground (c).
10. I have been provided with photographs which show the structure in place in late December 2022, a number of years before the enforcement notice was issued. I was able to see the structure during my site visit and so, I find the erection of a structure has occurred as a matter of fact and so the appeal under ground (b) must fail.

Ground (c)

11. An appeal under ground (c) is made on the basis that those matters stated in the notice (if they occurred) do not constitute a breach of planning control. Under a ground (c) appeal, the onus of proof is on the appellants to show, on the balance of probabilities, that there has not been a breach of planning control.
12. The meaning of development is set out in section 55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Building operations include other operations normally undertaken by a person carrying on business as a builder. Section 336 of the Act defines a "building" as "**any structure** or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building" (my emphasis in bold).
13. There are three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive. This principle was considered in an appeal decision² submitted by the Council

² APP/M3645/C/11/2166313

in the context of a stable building. Whilst the circumstances of the development in that case are not analogous to the development before me, I have had regard to the Inspector's reasoning and their application of the principle.

14. The structure is substantial in size relative to the car parking space upon which it is located. It extends almost the full width and depth of the parking space and is significant in height such that it is partly visible from Pacatian Way above the boundary fence and vegetation. It is readily visible to other users of the car parking area and from some neighbouring properties. As such it appears as a permanent feature within the car parking area.
15. The structure comprises a metal frame with several upright support columns. Each support column is bolted to the floor using a number of bolts that physically attach the frame of the structure to a concrete base. Side and roofing panels are numerous and these are attached to the top and sides of the frame using screws. A number of photographs have been submitted which show the structure at various stages of construction. In an image taken by the Council during a visit to the site on the 13 April 2022, a metal rail can be seen which the Council state has been cemented and fixed to the flooring and to which the side and rear elevations appear to be affixed. The appellant has not disputed this within their evidence.
16. In addition to being affixed to the ground, the structure is of some considerable size and weight which to my mind indicates a characteristic of permanence rather than being a temporary structure. Based upon the evidence before me and my own observations at the visit, I find that it could not be considered to be capable of easy or quick assembly/re-assembly.
17. Taking all of these factors into account, I therefore consider that what has occurred is the construction of a "building" and "building operations" that amount to "development" for the purposes of section 55 of the Act and for which planning permission is required.
18. Whilst not specifically raised by the appellant, the Council case has considered whether Part 4 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") is applicable. However, Part 4 Class A of the GPDO grants deemed permission for certain temporary buildings while operational development is being carried out. The permission does not apply in respect of activities which might, in lay terms, be described as operations but which in planning terms represent the use of land rather than operational development such as use of the structure to store a classic car. It also doesn't apply to permanent buildings.
19. Similarly, whilst not advanced by the appellant, Class E of the GPDO permits buildings incidental to the enjoyment of a dwellinghouse. It is the Council's view that since the development is sited on land outside of the curtilage of the main dwellinghouse, it would not be development permitted by the provisions of Class E. The appellant has not sought to dispute this matter and, on the evidence before me, I see no reason to take a different view.
20. Whilst the appellant has made reference to the structure being unfinished at the time of the matter being considered by the Council's Planning Committee on the 22 June 2022, the submitted photograph dated December 2022 which is well before the enforcement notice was served shows the structure to have

been completed. In any event, the definition of a building as defined within section 336 of the Act includes 'any part of a building'.

21. Having regard to all of the above considerations, I conclude that, as a matter of fact and degree, the development that has occurred has been the erection of a structure for which planning permission is required. The appeal under ground (c) must therefore fail.

Other Matters

22. The appellants have drawn my attention to other 'aluminium shed' structures nearby. The Council has indicated that these structures are subject to investigation and enforcement action may be taken, albeit the appellant disputes this is the case. In any event, the presence of other structures as justification for the development is a matter that relates to the planning merits of the case and as ground (a) has not been pleaded, I am unable to take them into account in reaching my decision. The same can also be said about any support for the development from a number of neighbouring residents.
23. Similarly, it has been put to me by the appellants that the development is 'not incongruous' and 'it is a very nice clean neat subtle dark colour and fits in well in the car park utility area'. However, these are matters which concern the planning merits of the case and do not form part of the considerations for an appeal on grounds (b) and (c).

Conclusions

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

E Brownless

INSPECTOR