



Appeal Decisions

Inquiry held on 29 April 2025

Site visit made on 28 April 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 08 May 2025

Appeal A Ref: APP/R1038/C/24/3342351

Appeal B Ref: APP/R1038/C/24/3342352

Land at Summerley Cottage, Summerley, Apperknowle, Dronfield S18 4BA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Simon Easthope and Appeal B by Mrs Toni Easthope against an enforcement notice issued by North East Derbyshire District Council.
- The notice was issued on 1 March 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, building and engineering operations to the rear and side of Summerley Cottage comprising-
 - 1) The erection of a building incorporating ground floor TV room, domestic store, bar area, and the provision of a platform and balustrade forming part and parcel of the building, shown together for the purposes of identification shaded blue on the attached plan ref: 22/00339/OD_B
 - 2) Engineering operations carried out to facilitate the construction of the building described in Para. 3. 1) above, and to facilitate the laying of a patio shown for the purposes of identification shaded green on the attached plan ref: 22/00339/OD_B
- The requirements of the notice are:
 - a) Demolish the building, comprising, ground floor TV room, domestic store, bar area, and platform and balustrade forming part and parcel of the building, and remove all materials arising from its demolition from the Land.
 - b) Take up the patio and remove all materials from the Land.
 - c) Reverse the engineering operations carried out to facilitate the construction of the building and the laying of the patio and restore the Land to its former condition and profile before the breach took place.
- The period for compliance with the requirements are:
 - Three months for Steps a) and b); and
 - Five months for Step c).
- The appeals are proceeding on the grounds set out in section 174(2) (c) & (d) of the Town and Country Planning Act 1990 (as amended).

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld.

Decisions

Appeal A and Appeal B

1. The appeals are dismissed and the enforcement notice is upheld.

Appeals A and B on ground (c)

2. The main issue in a ground (c) appeal is that the matters alleged in the Notice do not constitute a breach of planning control. This ground has been made by the appellants' only in so far as the breach of planning control alleges the laying of the patio which has been developed adjoining the ground floor TV (garden) room, domestic store and bar area. On this legal ground of appeal, the onus of proof is on the appellants to make out their case and the test is on the balance of probability.

3. The appellants maintain that the laying of the patio was a separate building operation from other development that has taken place on the Land and that the works undertaken in that operation are permitted by Class F, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development Order) (England) Order 2015, as amended (GPDO). Class F provides for development consisting of (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or (b) the replacement in whole or in part of such a surface, subject to limitations set out at F.1 and to conditions set out at F.2.
4. The breach of planning control at paragraph 3 of the Notice alleges: 2) *Engineering operations carried out to facilitate the construction of the building described in Para 3. 1) above, and to facilitate the laying of a patio shown for the purposes of identification shaded green on the attached plan ref: 22/00339/OD_B.* The appellants' do not dispute that engineering operations have taken place on the Land, and those works were undertaken where the patio has been subsequently laid. Furthermore, no appeal on ground (b) has been made to argue that the engineering operations undertaken did not facilitate the laying of the patio, as alleged.
5. From the evidence before me, including photographs of the appeal property prior to the appellants' purchasing it¹, aerial images², and plans submitted on behalf of the appellants illustrating the development that has taken place³, it is clear that substantial engineering operations have taken place to remove earth and level the garden area where the patio has been laid. Initial engineering operations were undertaken over a five week period in June/July 2019 to excavate and level the patio area and the adjoining land where the decking and building was subsequently constructed⁴. Mr Lyttle told the Inquiry that in Spring 2020 he assisted in further engineering works to prepare for the laying of the patio, he removed approximately one/two tons of earth adjacent to what is now the bar with a mini digger and micro dumper and produced a final level surface for the paving to be laid. The paving stones were subsequently laid by a friend of Mr Easthope, John Mitchell, and the patio was completed in May 2020.
6. I recognise that the initial engineering works for the patio were undertaken some months before the paving stones were finally laid. However, I have not been provided with any substantive evidence that would indicate that those engineering operations were undertaken on the site of the patio for a different purpose. I understand that during the intervening months drainage works were undertaken in the garden, and those works utilised stone from work continuing at the property, including renovating the swimming pool. Having regard to the intimate and functional relationship between the patio, the TV (garden) room and bar area, on the balance of probability those initial engineering operations were undertaken in that location to facilitate the construction of the patio. I can see no other reason to excavate the area where the patio has been laid, and no other explanation has been provided.
7. Mr Roberts accepted in cross examination that Class F does not make provision for the carrying out of engineering operations. The engineering operations

¹ Appendix 4 Local Planning Authority's Statement of Case.

² Appendix 5 Local Planning Authority's Statement of Case.

³ Elevations & Site Plans as existing January 2020 Drawing No: P06 Rev A.

⁴ Appendix SE11 Invoice for engineering works, Simon Easthope POE.

undertaken facilitated the laying of the patio and development has taken place for which no planning permission has been granted by the local planning authority. The engineering operation to facilitate and the laying of the patio is not permitted development under any provision of the GPDO. A breach of planning control has occurred, and the appeal on ground (c) fails.

Appeals A and B on ground (d)

8. The ground (d) appeal is that on the date when the notice was issued, no enforcement action could be taken. In relation to a breach of planning control consisting of building and engineering operations, at the time the notice was issued, no enforcement action may be taken after the end of the period of four years beginning when the development was substantially complete (s171B (1)). The relevant date in this case is thus 1 March 2020. The burden of proof in an appeal on this legal ground lies with the appellants and the test is the balance of probability.

The appellants' case

9. The appellants maintain that the breach of planning control alleged does not amount to one building but is a collection of distinct projects that have been undertaken. The unauthorised development was not one phase of operations but there were distinct elements carried out in a 'piecemeal' fashion, through additions and enhancements, and elements of those operations were substantially completed before the relevant date and cannot now be enforced against.
10. It is the appellants' case that the decking, TV (garden) room, and store were all completed in one phase in 2019. The covered bar, subsequently extended bar area and patio were all later, separate projects. Further enhancements were then added to the projects, including the balustrade and new cladding to the TV (garden) room. Notwithstanding their case that the laying of the patio is permitted development (ground (c)), the appellants accept that the development comprising the covered bar, extended and enclosed bar area, laying of the patio and construction of the balustrade, took place after the relevant date and can therefore be enforced against.

The Council's case

11. It is the Council's case that the building that has been constructed on the Land is a single building operation, and applying the principles set out in *Sage v Secretary of State for the Environment, Transport and the Regions & Maidstone BC* [2003] UKHL 22, there was not a substantially complete building until after the relevant date. The terrace/decking could not be said to be substantially complete until the balustrade, a necessary safety design feature, was installed in 2022. In addition, the decking creates the space beneath it, where the TV (garden) room, store and bar have been created. Those rooms were clearly designed spaces and in relation to the TV (garden) room cannot be said to be substantially complete until the bi-fold doors were installed sometime after they were ordered in July 2020. It is not possible to discern a time when the building operations that have taken place could be said to be substantially completed and separate works commenced. Consequently, there has been one ongoing project to create what is there today.

Assessment

12. It is common ground that the leading authority on “substantial completion” is *Sage*. In *Sage* it was held that the character and purpose of a structure falls to be assessed by examining its physical and design features. A holistic approach should be undertaken.
13. In relation to the engineering operations and construction of the decking the appellants rely on the evidence and statutory declarations of Mr Lyttle who constructed the decking, including a quotation for the materials⁵. An invoice is also produced for the preparatory earthworks for the decking and rooms beneath and specifies work undertaken between 18 June 2019 and 19 July 2019. The balance was paid on 23 August 2019.
14. The evidence in relation to these works is not disputed. The appellants’ ground floor kitchen extension was completed during the summer of 2018 and at the start of 2019 Mr Easthope engaged Mr Lyttle to provide a quotation for the decking materials and asked him to construct it. Those works of construction were undertaken during the spring/early summer of 2019, and Mr Lyttle’s final works were to extend the decking around the front façade of the TV (garden) room. Mr Lyttle stated that his work was complete on that part of the project by August 2019. The hot tub was installed during the construction of the decking in April 2019 and the BBQ house installed in August 2019. Mr Lyttle confirmed at the Inquiry that he was not involved in any of the earthworks to create the garden room as he is only a joiner. However, he also confirmed that on advice from a builder’s merchant, he realised it would be necessary to install steels to support the decking and rooms beneath, and he undertook those works as part of the project.
15. In relation to the construction of the TV (garden) room, store and covered bar, Mr Easthope initially stated that this space was resultant of the void created by the construction of the decking, and that space inspired the creation of those rooms⁶. However, it is clear from the invoice he provided at SE11 of his Proof of Evidence (POE) that he employed a contractor to carry out substantial earthworks during June/July 2019. Works specified in the invoice relate to the plant required to undertake those engineering works. Whilst I accept that some earth may have been removed as part of the foundation work for the ground floor kitchen, and that is evidenced to an extent by the 24 June 2018 aerial image, the invoice confirms, and later aerial images show, that much more extensive engineering operations were undertaken in June/July 2019. Furthermore, plans accompanying Mr Roberts’ POE show firstly the original site layout, then in January 2020 and again in March 2025, and indicate that substantial earth works beneath the decking were required to provide space for the TV (garden room), covered bar and patio. Having regard to the aerial photograph dated 22 April 2020 and in the absence of any substantive evidence from the appellants that would confirm further engineering works having taken place between July 2019 and April 2020, it is reasonable to conclude that the works invoiced and evidenced at SE11 were for the engineering operations undertaken to facilitate the building and patio works. Those works were undertaken during the construction of the decking and the TV (garden) room in the summer of 2019, and were part and parcel of building operations ongoing on the Land.

⁵ Quotation for decking materials, dated January 2019, Appendix SE6, Simon Easthope POE

⁶ Paragraph 4, Simon Easthope POE

16. It is the appellants' narrative that the works undertaken in the construction of the TV (garden) room were completed as originally envisaged, as a covered area for shelter, with toilet, by November 2019. In support of their assertion a photograph of the space in September 2019⁷ and again on bonfire night, November 2019⁸ are submitted. The September photograph shows a space with a newly laid stone flag floor, block work walls, with some silver foil draped down over part of it, and a timber roof frame. The photograph taken on bonfire night is taken from inside the space. The floor has been covered in tarpaulin, and Mr Easthope explained that his wife wanted to keep the stone clean⁹. The photograph shows the opening that had been designed and constructed, and where the bifold doors were later installed. It is the appellant's case that this was a completed building which they intended to utilise for shelter as part of the use of the wider garden area.
17. The original statutory declarations provided by the appellants and Mr Lyttle, dated 25 June 2024, include a photograph taken in September 2020, Exhibit SE2. Those 2024 statutory declarations state at paragraph 5:
 - *Exhibit SE2 is a photograph showing the extension in use in 2020 at a family birthday event. I can confirm that exhibit SE2 is an accurate reflection of the extensions as built and completed in 2019. No further works took place from 2019 completion to the 2020 birthday event.*
18. Exhibit SE2 shows the TV (garden) room fully fitted out with a kitchen, electrics, plaster boarded and finished walls, including a wall mounted TV. Mr Easthope confirmed in response to my questioning that the bifold doors were not in place in that September 2020 photograph, despite stating in his POE (para 14) and earlier at the Inquiry giving evidence in chief, that the kitchen had been installed after the doors were in place. Mr Easthope also confirmed that there were no electrics in the kitchen in November 2019 or other services, albeit it is understood the space included a toilet by November 2019 and Mr Easthope also stated under examination that the November version of the room had a fridge in it and work top.
19. It is clear from the documentary evidence submitted and contrary to the appellants' June 2024 statutory declarations, that considerable works were undertaken to the TV (garden) room between November 2019 and September 2020. Albeit I accept that in the absence of any documentary evidence it is unclear when those additional building works and design features took place. In cross examination Mr Easthope could not recall when the electrics were installed, when the plaster boarding and internal finishes took place, nor did he know who had undertaken those works. No invoices or quotations for those works have been provided, but Mr Easthope confirmed that he had not undertaken those works himself, only labouring. He told the Inquiry that these works would not have been undertaken until the bifold doors were in place, and the building weather tight. However, Exhibit SE2 clearly shows that not to be the case, and Mr Easthope later recalled in cross examination that his wife had been disappointed that the doors were not in place before the party, but that they were installed shortly after, as ordered in July 2020.
20. I recognise that the appellants' state that their intentions were only ever to create a covered seating area with toilet, and it was only when they began to use the space

⁷ Photograph dated 9 September 2019, Appendix SE8 Simon Easthope POE.

⁸ Photograph dated 5 November 2019, Appendix SE12 Simon Easthope POE

⁹ Paragraph 10 Simon Easthope POE.

for that purpose that they realised it was cold without doors, and that a kitchen would be beneficial for entertaining. However, I have not been provided with any substantive evidence that the room was utilised as a covered seating area at all before the patio was laid, which was after the relevant date. Before the patio was laid, the room opened out onto bare earth and in November 2019 Mrs Easthope did not wish the internal floor that had been laid to get dirty. That would be inevitable unless the room was weather tight with doors fitted or the stone flagged patio laid. Both of those parts of the building operation were not complete until after the relevant date. I am also mindful that the November 2019 photographs suggest that the entrance to the building was designed with the intention of being fitted with doors. It is not known when the internal finishes, electrics and kitchen were installed to this room, nor whether those works took place alongside renovation of the swimming pool, which Mr Easthope confirmed continued over winter and during the spring of 2019/20. I note that the doors for the TV (garden room) were ordered at the same time as the new windows were ordered for the swimming pool, which may suggest that the works undertaken in both the swimming pool renovation, laying of the patio and internal works to the garden room were all continuing on the site alongside each other. There is no evidence in terms of quotations or invoices to establish when building operations on one part of the building finished and separate works commenced.

21. Notwithstanding the appellants stated intentions, it seems to me when undertaking an objective assessment of the character and purpose of the TV (garden) room as now completed, observed on my site visit, and what had been undertaken by 1 March 2020, considering its physical and design features, the TV (garden) room was not substantially complete until the bifold doors were installed. The appellants evidence, as set out above, is clearly ambiguous, and not sufficiently precise to enable me to conclude that this building was substantially completed in November 2019, as argued by the appellants. I recognise that there are no internal linkages between the TV (garden room) and bar, however the patio facilitates the use and function of those rooms, which further supports the evidence that the works undertaken were part of a single building operation to create internal functional leisure and recreational space for intimate use with the outdoors.
22. Turning to the construction of the balustrade. It is the Council's case that this is an important design feature of the decking, as it is clearly necessary for the safe use of the decking which in parts is at least 2m above adjoining ground level. Thus, although the decking was constructed in the summer of 2019, the Council believe it cannot be considered to have been substantially completed until the balustrade was in place in 2022. The appellants do not agree. They advise that it was only after their grandchildren were at an age when they wished to utilise the decking unsupervised, that they considered it necessary to install the safety balustrade. To support that view they have provided photographs of the decking in use by their family in 2019 and told the Inquiry that the hot tub and BBQ hut were used for recreation and leisure along with the decking between their installation in 2019 and when the balustrade was installed in 2022. It was thus not a necessary design feature; it was not originally planned, and they contend the decking was substantially completed in 2019.
23. It is common ground that the balustrade was installed after the relevant date and can be enforced against. It is also evident that the appellants were utilising the decking prior to the installation of the balustrade, for a period of some 3 years, and

before the relevant date. Nonetheless, I have found that the TV (garden) room beneath the decking was not substantially complete until post July 2020, and that room was designed, constructed and facilitated by the construction of the decking as part of a single building operation. The decking forms the roof to the TV (garden room), store and bar. Those parts of the building operation were not substantially complete until after the relevant date, and the decking is part and parcel of that building. Thus, the decking was not in my judgement substantially completed until at least the TV (garden) room doors were installed, which the appellant confirmed at the Inquiry was not earlier than September 2020, after the birthday celebration.

Overall summary

24. Having regard to the totality of the evidence, including that heard and examined during the Inquiry, I am not persuaded that the alleged building operations, facilitated by engineering works, were substantially completed more than four years before the notice was issued. This is because the appellants' evidence and version of events, is not sufficiently precise and unambiguous for the reasons given above. The appeals on ground (d) therefore fail.

Conclusion

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

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Ms Elana Kaymer of Counsel

She called:

Mr Simon Easthope	Appellant
Mr Ricky Lyttle	Appellant's joiner
Mr James Roberts MA MRTPI	JR Planning

FOR THE LOCAL PLANNING AUTHORITY

Mr Freddie Humphries of Counsel

He called

Mr Julian Hawley BSc, MSc	Principal Planning Enforcement Officer
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Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R1038/C/24/3342351	Mr Simon Easthope
Appeal B	APP/R1038/C/24/3342352	Mrs Toni Easthope