
Appeal Decision

Site visit made on 3 February 2026

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2026

Appeal Ref: APP/M4320/C/24/3349873

Land at 100 Guildford Road, Southport, PR8 4JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Chris Wright, Melford Construction Limited against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The notice was issued on 9 July 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a shed within the curtilage of the dwellinghouse which is not used for a purpose incidental to the enjoyment of the dwellinghouse in the approximate position shown cross-hatched on the attached plan 2.
 - The requirements of the notice are: You must remove the shed from the property.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

The ground (c) appeal

2. To succeed on an appeal on ground (c) the appellant must demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to make out their case, with the relevant test of the evidence being on the balance of probabilities.
3. The alleged breach of planning control concerns a shed within the curtilage of 100 Guildford Road which not used for a purpose incidental to the enjoyment of the dwelling. Although the shed had been removed by the time of my site visit, and the requirements of the notice complied with, there is no dispute that it was in situ on the date of the notice. I am confined to considering whether the alleged operational development amounted to a breach of control when the notice was issued. The planning merits of the development and what may or may not be built on the site in the future are not within the remit of this appeal.
4. The shed was the subject of an application for a certificate of lawful use or development (the LDC application) submitted under s191(1)(b) of the Town and Country Planning Act 1990, to establish the lawfulness of the existing building, rather than an existing use. That application, which was made on the basis that the shed constituted permitted development, was refused by the Council and subsequently dismissed on appeal on 17 May 2024¹. The dispute was over whether the shed was within the curtilage of No 100 and reasonably required for a purpose incidental to the enjoyment of the dwelling. While the Inspector found that the shed

¹ Application ref DC/2021/01740, Appeal ref APP/M4320/X/24/3336597

was within the curtilage, they also concluded that it was not reasonably required for a purpose incidental to the enjoyment of the dwelling, and it did not therefore constitute permitted development. A concurrent s78 appeal against the refusal of planning permission for a new dwelling on the land was also dismissed².

5. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits the provision within the curtilage of a dwellinghouse any building required for a purpose incidental to the enjoyment of a dwellinghouse, subject to certain limitations.
6. There is no dispute that the shed lies within the curtilage of the dwelling or that it complies with the limitations set out in E.1, E.2 and E.3 of Class E. However, for a building to be permitted development under Class E, it must be 'required for some incidental purpose', as established in *Emin v SSE & Mid Sussex DC [1989] JPL 909*. The size of the building, including in comparison to the host dwelling, may be an important consideration, but size alone is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
7. At the time of the LDC application, it seems likely that the shed was used by the occupiers of No 100 for the storage of domestic items and thus used for purposes incidental to the enjoyment of the dwelling. However, while it may have been so used at that time, there is no substantive evidence before me to show that it was originally provided and used for such purposes. The positioning of the shed so close to the boundary with 119 Shaw's Road and to the window in the side of that property, together with its unusually steep pitched roof, are clear indications that it was designed and erected for the purpose of blocking views from the neighbour's kitchen window, in an attempt overcome the Council's only reason for refusing permission for a new dwelling on the land. That was also the view of the previous Inspector. The appellant has not suggested otherwise.
8. The appellant's ground (c) appeal is made on the basis that the shed is incidental to the enjoyment of the dwelling and was so at the time of the LDC application, and that it is therefore permitted development. The appellant says that the previous appeal decision was incorrectly determined as it was based on whether the shed was lawful at the time of its erection, when the deciding factor should have been whether it was lawful at the time of the application, having regard to S191 of the Act. S191(4) refers to lawfulness at the time of the application of the use, operations or other matter described in the application.
9. However, in order to be found lawful at the time of the LDC application, the development would need to have been permitted by the GPDO when it was first erected. This is because a planning permission granted by the GPDO is crystallised when the development begins.
10. The evidence before me suggests that at the point it was erected, the building was not genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling. The later use of the building for incidental purposes does not mean that it became permitted development since the GPDO does not grant permission retrospectively for development that was unlawful at the point of construction. As such, the building cannot be permitted development under Schedule 2, Part 1,

² Application ref DC/2023/00228, Appeal ref APP/M4320/W/24/3336615

Class E of the GPDO. I am not aware that there has been a grant of express planning permission for it.

11. For these reasons I conclude that the building constituted a breach of planning control when it was erected, and it remained in breach at the date of the enforcement notice. Accordingly, the appeal on ground (c) fails.

Conclusion

12. For the reasons given, I conclude that the appeal should be dismissed, and I shall uphold the enforcement notice.

M Ollerenshaw

INSPECTOR