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# Appeal Decision

Site visit made on 26 March 2024

**by H Davies MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 April 2024**

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## **Appeal Ref: APP/B1605/C/23/3328819**

### **12 Pilford Road, Cheltenham GL53 9AQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
  - The appeal is made by Mr Clive Ellis against an enforcement notice issued by Cheltenham Borough Council.
  - The notice was issued on 9 August 2023.
  - The breach of planning control as alleged in the notice is, without planning permission, the erection of a two-storey garden room to the rear of 12 Pilford Road, Cheltenham, in the approximate position shown cross-hatched on the attached plan, refused under planning permission 20/00237/FUL, decision date 7 December 2021.
  - The requirement of the notice is to reduce the height of the outbuilding to a maximum overall height, from external ground level to the top of the finished roof to 2.5m, due to its proximity to the boundary so the outbuilding falls within the parameters of Permitted Development.
  - The period for compliance with the requirement is 6 months.
  - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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## **Decision**

1. It is directed that the enforcement notice be corrected as follows:

- In section 3 (Matters which appear to constitute the breach), delete the words "garden room" and substitute with the word "outbuilding".

2. It is also directed that the enforcement notice be varied as follows:

- In section 5 (What you are required to do), delete the text in its entirety and replace it with the following text:

"Reduce the height of the outbuilding to a maximum overall height of 2.5 metres, from external ground level to the top of the finished roof, so it complies with all relevant criteria set out under Schedule 2, Part 1 Class E of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended), including the height criteria for outbuildings within 2 metres of the boundary.

OR

Demolish the outbuilding, remove all resultant materials from the Land and restore the Land to its former condition."

3. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

## **The Notice and Preliminary Matters**

4. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council.
5. The term 'garden room' is used in the breach description but 'outbuilding' is used in the requirement. For consistency, I have corrected 'garden room' to 'outbuilding'. In the requirements, I have clarified the wording and specified the relevant Class of the Town and Country Planning General Permitted Development (England) Order 2015 (GPDO). As set out below, I have also varied the requirement by adding the option to remove the outbuilding in its entirety. I am satisfied that I can make these changes to the notice without causing injustice.
6. Planning permission for the outbuilding (part retrospective) was refused under application ref 20/00237/FUL. There is no appeal on ground (a), which is that planning permission ought to be granted. Therefore, the planning merits of the development are not considered under this appeal and it is not open to me to grant planning permission for the outbuilding.

## **The Appeal on Ground (f)**

7. An appeal on ground (f) is that the steps required by the notice exceed what is necessary. Section 173 of the Act sets out 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 notice requires changes to the outbuilding so it complies with the relevant criteria for permitted development. It is therefore evident that the purpose of the notice is to remedy the breach.
8. Schedule 2, Part 1 Class E of the GPDO grants permitted development rights for the provision within the curtilage of a dwellinghouse of a building, for a purpose incidental to the enjoyment of the dwelling house as such, subject to criteria. The relevant criteria for this case include that the outbuilding would not have more than a single storey and would not exceed a height of 2.5 metres for a building within 2 metres of the boundary.
9. Permitted development rights cannot be claimed retrospectively by making changes which return the development to compliance with permitted development limits. Notwithstanding this, such rights could be claimed in the future, following removal of the outbuilding, and would enable the appellant to replace the outbuilding with one that met the GPDO criteria. This represents a realistic fallback position for the appellant.
10. The enforcement regime is intended to be remedial rather than punitive. Requiring the appellant to reduce the height of the building (which would inevitably remove the upper floor) so that it complies with GPDO criteria, is an obvious alternative to total removal. It was therefore reasonable for the Council to require the height to be reduced to 2.5 metres as the outbuilding is located within 2 metres of the boundary. I do not consider the requirement of the notice to be excessive.

11. The appellant has not presented an alternative scheme that would remove the breach of planning control. Even if they had, any such alternative scheme would likely require planning permission. As there is no appeal on ground (a), planning permission cannot be granted under this appeal.
12. There is no scheme before me setting out a detailed proposal for modifying the outbuilding so it meets the requirements of the notice. However, I do not consider it necessary in this instance, as specifying compliance with the relevant criteria of the GPDO is sufficient.
13. Notwithstanding the above, reducing the height of the outbuilding may not be practical, and its removal may be easier and less costly for the appellant. I do not consider removal to be a lesser measure, but it is an obvious alternative. Consequently, I have varied the requirement set out in the notice to add an option to remove the outbuilding in its entirety.
14. In summary, the purpose of the notice is to remedy the breach of planning control, and there are no lesser measures that would remedy the breach. No alternative scheme to remedy the breach has been presented and even if it had been, there is no appeal on ground (a), so the notice cannot be varied to allow for an alternative scheme. For these reasons, the appeal on ground (f) fails.

### **Other Matters**

15. I note reference to alleged comments made by a Council planning officer to the appellant during a site visit. Any such comments do not constitute the granting of planning permission. I have been provided with an email which shows that the appellant was informed as early as October 2019 that planning permission would be needed for the building. Planning permission (part retrospective) was applied for and subsequently refused in December 2021. The appellant was informed by email in January 2023 that the development remained unauthorised and the breach needed to be rectified. Consequently, the appellant had been informed of the issues and the need to rectify the breach, prior to the issuing of the notice.
16. During my site visit it was evident that there are a range of other wooden outbuildings in surrounding gardens. However, none appear to exceed a single storey. There are trees along parts of the site boundary, but the highest part of the appeal outbuilding is visible from the access road into Pilford Court.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal does not succeed. I shall uphold the enforcement notice, with correction and variation.

*H Davies*

INSPECTOR