The Planning Inspectorate

Appeal Decisions

Site visit made on 2 July 2018

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2018

Appeal A Ref: APP/B9506/17/3187537
Appeal B Ref: APP/B9506/17/3187538
Meadow View Cottage, (formerly Torbay), Pound Lane, Burley, Ringwood, BH24 4ED

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr William John Holley and Appeal B by Mrs Anne Denise Holley against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 22 September 2017.
- The breach of planning control as alleged in the notice is the erection of a conservatory in the approximate position edged blue on the plan attached to the notice.
- The requirements of the notice are
  1. Demolish the conservatory shown in the approximate position edged blue on the plan attached to the notice to ground level, including the floor slab;
  2. Remove all debris resulting from compliance with step 1 above from the land affected.
- The period for compliance with the requirements is 4 months.
- The appeals are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- **Summary of decisions: Appeals allowed and notice quashed**

Applications for costs

1. Applications for costs were made by the Authority against the appellants and by the appellants against the Authority. These applications are the subject of separate Decisions.

The appeal site

2. The appeal property is a detached dwelling on a relatively spacious plot in the Burley Conservation Area. At the time the enforcement notice was served at the rear of the house was a three-sided single-storey, hipped-roof structure, described by the appellants as a garden room and by the Authority as a conservatory, which is the subject of this appeal. For the purposes of this decision, I shall refer to the alleged unauthorised development as the garden room.

3. The open side of the glazed garden room originally faced the single storey extension to the house with doors opening out to the garden. The gutter of the extension overhangs the roof of the garden room, the roof of which is about 20cm from the soffit of the extension. However, subsequent to the serving of the notice, the appellants have installed additional doors fully enclosing the garden room. The dwarf brick walls between the 29cm gap between the flank

walls of the garden room and the house extension have been removed. Furthermore, some lightweight material had been placed between the roofs of the extension and the garden room to reduce the ingress of the elements although this was not attached and had been removed at the time of the site inspection.

Appeals on ground (c)

4. An appeal on this ground is that there has not been a breach of planning control. The appellants state that it is a free-standing structure not attached to the dwelling house as it is 29cm from it. It is contended that it complies with the provisions of Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), rather being an extension to the dwelling to which Class A applies. It was erected in June 2017.

5. As this is a legal ground of appeal the onus of proof is on the appellants to show that the development does not require express planning permission on the balance of probability.

6. Class E provides permitted development rights for buildings etc within the curtilage of a dwelling house subject to various limitations and conditions, and which should be built for purposes incidental to the enjoyment of the house. The DCLG Technical Guidance 'Permitted development rights for householders' (April 2017) provides guidance on the GPDO and indicates that buildings which are attached to the house are not permitted under Class E but subject to the rules in Class A.

7. In this appeal, it is necessary to consider whether the garden room is 'attached' to the house. The evidence indicates that as a steel framed structure, the garden room does not depend on the house extension for its support but, at the time the notice was served, the garden room abutted the extension by way of its dwarf walls albeit that there was a finger-width gap between the dwarf wall and the extension. However I note from the photographs submitted by the Council at Appendix 1 show that the window sills extend up to the wall with only a minimal gap. The fact that these dwarf walls and sills have now been removed by the appellants leaving a 29cm gap with the house, or that additional doors have been installed is not material as I am determining this case on the basis of the structure that existed at the time the development occurred. I make no comment on the lawfulness of the structure as it has been altered at the time of my site inspection.

8. The GPDO makes a clear distinction between extensions to a dwelling and buildings, etc that are constructed within the curtilage of a dwelling and this is a distinction that would be evident in most circumstances. It does not indicate whether such Class E structures should be a minimum distance from the dwelling although the Technical Guidance refers to buildings attached to a dwelling falling within Class A. The proximity of the dwarf walls, the sills, the overhanging guttering and the flexible material between the roofs do not represent an attachment of the garden room to the extension in the normal use of the word. Whilst a casual observer might perceive the garden room as an extension to the dwelling and not as a free-standing structure, this does not outweigh the fact that the structure is not physically 'attached' to the extension, albeit that it is adjacent to it.

9. The appellant refers to a Lawful Development Certificate allowed on appeal[1] in which the Inspector was of the opinion that the key characteristic of a curtilage building under Class E is that it should not be attached to the main dwelling. She also drew attention to the changes to the GDPO in 2008 which removed the limitation that any curtilage building of more than 10 cubic metres constructed within 5 metres of an existing dwelling would have been treated as an enlargement of the dwelling under Class A. The inspector pointed out that had it been intended that some curtilage buildings should not be permitted because of proximity to the dwelling then it would be reasonable for this to be stated in the GPDO.

10. However, to meet the limitations of Class E, the building should be for purposes incidental to the enjoyment of the house. The appellants' state that the garden room is used occasionally as a garden room or sun room, which is for a purpose incidental to the enjoyment of the dwelling. However the Authority considers that it neither appears nor functions as an incidental adjunct to the dwelling, that it contains furniture and is used as habitable accommodation.

11. I see little difference between the appellants' use of the structure as a garden room with the erection an outbuilding used for purposes incidental to the enjoyment of the house such as a hobby room or garden gym. Class E does not have any limitation in respect of habitable accommodation although the Guidance indicates that a purpose incidental to a house would not cover normal residential uses, such as separate living accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. I do not consider a three sided structure, partially open to the elements to represent primary living accommodation.

12. The Authority cites two appeal decisions[2]in support of their case, the first of which related to a conservatory that the Inspector held to be attached to a dwelling with no physical separation. The second related to an enclosure of a swimming pool that was held to be attached to a conservatory wall via bolts and seals. Both of these cases are distinguished from the current appeal as the facts and circumstances are materially different.

13. It appears that the appellants have gone to great lengths to contrive a form of development that might otherwise have been resisted under the Authority's planning policies limiting the size of extensions. Whilst the Parish Council and the Authority may question the interpretation of the GPDO, the GPDO has been relaxed in recent years to enable householders to undertake a greater range of development without the need for express permission. On the basis of the evidence before me therefore I conclude on the balance of probability that the garden room as originally erected, represented a Class E building within the curtilage of the appeal property, which is permitted development under Class E of the GPDO.

Conclusions

14. For the reasons given above I conclude that the appeals should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended do not need to be considered.

[1] APP/Q5300/X/10/2125856
[2] APP/N5090/C/12/2173250 and APP/J3530/X/2179210

Formal Decisions

15. The appeals are allowed and the enforcement notice is quashed.

P N Jarratt

Inspector