



# Appeal Decision

Site visit made on 28 September 2009

by **Chris Hoult BA BPhil MRTPI MIQ**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**22 October 2009**

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## Appeal Ref: APP/B3410/C/09/2104868

**389 Rosliston Road, Stapenhill, Burton-upon-Trent, Staffordshire, DE15 9RJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J P O'Toole against an enforcement notice issued by East Staffordshire Borough Council.
- The Council's reference is EN/00020/07.
- The notice was issued on 7 April 2009.
- The breach of planning control as alleged in the notice is the erection of a timber shed without planning permission.
- The requirements of the notice are to demolish and permanently remove the shed from the Land.
- The period for compliance with the requirements is 30 days beginning on the day on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").

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### Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Preliminary matters

2. While the Council's statement draws my attention to the lack of a reference to development plan policies in the notice, I see no need to correct it in this respect. There is a large measure of agreement between the parties as to the relevant development plan policies.

### Decision

3. I direct that the enforcement notice be varied by substituting, in section 6, three months as the time for compliance with its requirements. Subject to this variation, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Ground (a) appeal

#### *Main issue*

4. The main issue is the effect of the shed on the character and appearance of the street scene.
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*Reasons*

5. The appeal property is an imposing early 20thC detached dwelling which occupies a prominent and elevated plot at the junction of Rosliston Road and Hill Street, in a locality characterised by a mixture of dwelling types, ages and sizes. The larger dwellings on the main Rosliston Road frontage give way to smaller-scale, mainly terraced dwellings on Hill Street. Undistinguished modern dwellings, such as may be found, for example, adjacent to the appeal property, tend to detract from the overall quality of the townscape. Access to the property is by means of a wide, sloping driveway fronting on to the main road and its main entrance also fronts this road. Accordingly, I am of the view that the elevation facing this road is its principal elevation. However, the plot is not a conventional one and also has frontages to, and is prominent from, Hill Street and the wide junction itself.
6. Therefore, although the shed has been erected in the rear part of the plot in relation to the principal elevation, it has an imposing presence when viewed from around the junction and from Hill Street. Its footprint fills the whole of the available width within a triangular rear yard and it has been erected very close to close-boarded fencing forming the boundaries of the plot. Because of this, and given its height and the extent to which it is visible above the fencing, it has an excessively bulky and cramped appearance when viewed in association with this fencing and with the dwelling. It is hard to escape the conclusion that, in spite of appearing well-built and employing materials which are typical of a domestic shed, it has been "shoehorned" into what available space there is in the plot, with little regard for its setting or surroundings.
7. The appellant asks me to take into account the fall-back position which would be offered by the permitted development rights for a shed of this kind available under Part 1 Class E of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 as amended. I accept that the shed does not appear to take up anywhere near 50% of the area of the curtilage excluding the dwelling, notwithstanding that much of that is made up of gardens that slope down to the road. Permitted development rights would therefore allow for a building of similar width and depth to that built.
8. However, the shed exceeds the limits on the height of such a building, for one close to the boundary, by a small but significant margin. A shed of reduced height would still be a prominent feature as part of the plot frontage to a main road. However, it would display better proportions and not have such a visually dominant presence in the street scene. The existence of a fall-back is therefore a matter to which I give some weight but which cannot on its own account justify the effect on the street scene of the shed as built. In coming to this view, I note the presence of the shed on the adjoining plot and also of some undistinguished modern garages in the immediate vicinity. Whereas that shed may have something of a dominating presence as viewed from within the rear yard, it is nevertheless set well back from the road and is far less prominent in the wider street scene.
9. I considered the extent to which staining or painting the shed and the addition of landscaping might mitigate its effect. However, my concerns are not necessarily about its colour, even the light colour depicted on the appellant's photographs, so much as about its height and bulk. In the light of this, and

given its position close to the boundary fence, I see little scope for landscaping to soften its appearance to any material degree. For these reasons, I conclude that the shed as built has a harmful effect on the character and appearance of the street scene. It conflicts with criteria (d) and (e) of saved Policy BE1 of the East Staffordshire Local Plan with regard to its massing, when considered in its context, and how its height relates to surrounding development. The ground (a) appeal therefore fails.

### **Ground (f) appeal**

10. By virtue of s173(4)(a) and (b) of the 1990 Act, an enforcement notice can achieve one of two purposes, to remedy a breach of planning control or to remedy any injury to amenity which has been caused by the breach. The notice alleges the unauthorised erection of the shed and, while the Council's statement indicates that its purpose is to remedy the breach, it is in part intended to remedy the injury to amenity caused by the breach. Staining the shed (which has in any event been done) might have been the subject of a condition attached to a grant of permission under ground (a) allowing its retention. As it is, while a requirement to demolish and remove it does not exceed what is necessary to remedy the breach, I could consider lesser steps.
11. The appellant's reference to the principle established in *Mansi v Elstree RDC* [1964] P&CR 153 is of limited relevance, as that refers to the need to make a saving for a lawful use and the shed represents an unlawful building operation. However, there is nothing in the requirements which would prevent the appellant from re-building the shed to conform to the limits on his permitted development rights once he has complied with the notice.
12. With regard to the suggestion that the notice need only require that its height be reduced, the shed is a substantial building and this might well involve major structural alterations, including its partial or even substantial dismantling or demolition. Since I have no evidence as to how this might be achieved, I am not satisfied that I could specify alternative requirements to those in the notice in sufficiently clear terms. It remains open to the appellant to pursue this option through the submission of a formal planning application. Alternatively, given the fall-back position, he could seek to agree with the Council how the requirements might be complied with simply by reducing the building's height. Given this, the appeal under ground (f) fails.

### **Ground (g) appeal**

13. I note the appellant's comments regarding the need to undertake any demolition works with care, with a view to conserving materials. In the light of this, and of the Council's acceptance that three months to comply with the requirements would be a reasonable period, I vary the notice to substitute this as the period for compliance. It would be open to the Council to extend this period should it see fit. To that limited extent, the ground (g) appeal succeeds.

*C M Hoult*

INSPECTOR